

1906. FINAL PART (Section II—Civil).
2nd YEAR OF ISSUE.

EACH PART OF THE INDEX INCORPORATES AND SUPERSEDES ALL THE PREVIOUS PARTS OF THE SAME YEAR.

The "Current Index" is published quarterly, on or about April 1st, July 1st, October 1st, and December 31st, in each year.

The Final Issue, which forms the complete Index for the year, is distinguished from these temporary Parts by thicker paper and by a special Wrapper.

THE
CURRENT INDEX

OF
INDIAN CASES, 1906.

(FINAL PART - SECTION II - CIVIL).

COMPILED BY

T. V. SANJIVA ROW,

First Grade Pleader, Trichinopoly.

AUTHOR OF A DIGEST OF PRIVY COUNCIL RULINGS.

THE LAWYER'S COMPANION AND THE LAWYER'S REFERENCE.

The Cases digested in this Part, have been taken from the following Reports.

Allahabad Series, Vol. XXVI I.
Bombay " " XXX.
Calcutta " " XXXIII.
Madras " " XXIX.

Madras Law Journal, III.

Madras Weekly Notes, 1906.

Madras Law Reporter, Vol. VIII.

Madras Weekly Notes from No. 7 in Vol. X.

No. 7 in Vol. XI.

Madras Law Journal, Vols. III and IV.

PUBLISHING OFFICE

MADHWA VILAS,

TEPPAKULAM, TRICHINOPOLY.

Madras Law Journal, Vol. XVI.

Madras Law Times, Vol. I.

Punjab Record (Judicial), 1906.

Law Reporter, 1906.

Nagpur Law Reports, Vol. II.

Judicial Cases, Vol. IX.

Upper Burma Rulings, 4th Quarter, 1906, and

1st 3 Quarters of 1906.

Upper Burma Rulings, 1st 2 Quarters of 1906.

Criminal Law Journal, Vols. III and IV.

Travancore Law Reports, Vol. XXI.

COPYRIGHT REGISTERED

AND

RIGHT OF TRANSLATION RESERVED.

DEDICATED

BY PERMISSION

TO

THE HONORABLE SIR CHARLES ARNOLD WHITE. KT.

(Bar-at-Law)

CHIEF JUSTICE, HIGH COURT OF JUDICATURE, MADRAS.

WHOSE APPRECIATION AND ENCOURAGEMENT

IN CONNECTION WITH THIS COMPILATION

THE COMPILER DESIRES VERY GRATEFULLY TO ACKNOWLEDGE.

AN IMPROVEMENT.

has been effected in the Final Part of the Current Index of 1906, so that the same may serve as an Index, not only of the whole Case-law reported during the year 1906, but also as an Index, in a way, of the Case-law of 1905, *i. e.*, Cross References for *ALL* cases of 1905 are inserted, under their appropriate Headings and Sub-headings, in the Final Part of 1906, so as to direct the reader's attention also to the cases reported during 1905. In other words, the Final Part of 1906 is a consolidation, in a way, also of the Final Part for 1905.

EXAMPLE :—

At Col. 623, there are some decisions under Art. 148 of the Limitation Act. There is none under Arts. 149, 152 & 156, during the year 1906, but there are some in 1905. Cross References are given to such decisions as follows :—

Art. 144—	See I, 652, No. 121,
Art. 152—	See I, No. 6,
Art. 106—	See I, No. 27,

and so on, meaning Vol. I, Col. 652, No. 121, Vol. I, Nos. 6, 27 under the same heading (*i. e.*) Limitation Act.

So also in the Criminal Part of the Current Index.

The advantages to the reader are obvious :—

By perusing the Current Index for 1906, his attention will be directed to the cases of 1905, in addition to those, if any, appearing in 1906, under the particular heading or section.

“MADHWA VILAS”
Teppakulam, Trichinopoly.
15th March, 1907.

T. V. SANJIVA ROW.

TABLE OF CONTENTS.

•	—	•
Abbreviations Explained		v
Table of Cases Digested in this Part.		vii
Table of Cases, over-ruled, followed, &c.		xlv
Alphabetical Table of Headings and Sub-Headings in this Part		cxl
Digest of Cases		1
Supplement		1
Appendix		<i>a</i> 1

ABBREVIATIONS EXPLAINED.

REPORTS.

A. ...	...	...	...	Indian Law Reports, Allahabad Series.*
A.L.J. ...	...	...	...	Allahabad Law Journal.*
A.W.N. ...	...	...	...	Allahabad Weekly Notes.*
B. ...	...	...	...	Indian Law Reports, Bombay Series.*
B.H.C. ...	...	...	...	Bombay High Court Reports.
B.L.R. ...	...	...	...	Bengal Law Reports.
Bom.L.R. ...	...	...	...	Bombay Law Reporter.*
Bur.L.R. ...	...	...	...	Burma Law Reports.
C. ...	...	...	...	Indian Law Reports, Calcutta Series.*
C.L.J. ...	...	...	...	Calcutta Law Journal.*
C.L.R. ...	...	...	...	Calcutta Law Reports.
C.W.N. ...	...	...	...	Calcutta Weekly Notes.*
C.P.L.R. ...	...	...	...	Central Provinces Law Reports.
Cr.L.J. ...	...	...	...	Criminal Law Journal of India.*
I.A. ...	...	...	...	Law Reports, Indian Appeal.*
L.B.R. ...	...	...	...	Lower Burma Rulings.*
M. ...	...	...	...	Indian Law Reports, Madras Series.*
M.H.C. ...	...	...	...	Madras High Court Reports.
M.L.J. ...	...	...	...	Madras Law Journal.*
M.L.T. ...	...	...	...	Madras Law Times.*
M.I.A. ...	...	...	...	Moore's Indian Appeals.
N.L.R. ...	...	...	...	Nagpur Law Reports.*
N.W.P.H.C. ...	...	...	...	North West Provinces High Court Reports.
O.C. ...	...	...	...	Oudh Cases.*
P.R. ...	...	...	...	Punjab Record.*
P.L.R. ...	...	...	...	Punjab Law Reporter.*
T.L.R. ...	...	...	...	Travancore Law Reports.*
U.B.R. ...	...	...	...	Upper Burma Rulings.*
W.R. ...	...	...	...	Sutherland's Weekly Reporter.

OTHER ABBREVIATIONS.

Appl...	...	...	...	Applied.
Appr...	...	...	...	Approved.
D. or Distd.	...	...	...	Distinguished.
Disc. ...	...	...	...	Discussed.
Diss. ...	...	...	...	Dissented from.
Exp. ...	...	...	...	Explained.
F. ...	...	...	...	Followed.
(F.B.) ...	...	...	...	Full Bench.
Obs....	...	...	...	Observed on.
(P.C.)...	...	...	...	Privy Council.
R. or Refd. to	...	...	...	Referred to.
(S.B.) ..	...	...	...	Special Bench.

(N.B.)—(1) This Publication embodies cases (Civil and Criminal) from the Reports marked above with asterisks.

(2) In the Punjab Record and the Punjab Law Reporter, the cases are known by their numbers and not by the pages where they are printed; (e.g.) 4 P. R. 1906 would mean Case No. 4 in the Punjab Record of 1906. The same explanation applies to the Punjab Law Reporter also. It has also to be remarked that the Punjab Record and the Punjab Law Reporter have been divided into two sections, Civil and Criminal.

(3) For Cases from Reports other than those published in India, the Vols. and pages are printed exactly in the manner they are to be found in the original cases wherein they are referred to.

THE CURRENT INDEX, 1906.

TABLE OF CASES DIGESTED IN THIS PART.

Name of Case.	Volume and Page.	Column of Digest.
(Privy Council Cases).		
Ahmad Wali Khan v. Shamsh-ul-jahan Begam	28 A 482-10 C W N 626-3 A L J 360-3 C L J 481-1 M L J 143-8 Bom. L R 397-16 M L J 269	704, 737, 919
Auseri Lal v. Raja Maneshar Bakhsh Singh	4 C L J 1-1 M L T 205-3 A L J 495-9 O C 188-8 Bom. L R 491-10 C W N 849-16 M L J 292-28 A 570	134, 343
Babu Laliteswar Singh v. Mohunt Ram Kishen Das	10 C W N 969-4 C L J 177-16 M L J 365-8 Bom. L R 719-3 A L J 689-1 M L T 308-33 C 1178	79
Bai Gungabai v. Bhugwandas Valji	9 C W N 769-7 Bom. L R 854-29 B 530-15 M L J 271-3 A L J 68-32 I A 142	939
Kesserbai v. Hunsraj Morarji	10 C W N 802-4 C L J 9-8 Bom. L R 446-3 A L J 434-1 M L T 211-30 B 431-16 M L J 446	483
Balwant Singh v. Amolak Ram	3 C L J 85-1 M L T 65-28 A 223 16 M L J 160	910
Basanta Kumari Debi v. Kamikshya Kumari Debi	2 C L J 238-15 M L J 320-7 Bom. L R 904-10 C W N 1-2 A L J 870-33 C 23-32 I A 181	509
Benode Behari Bose v. Nistarinee Dasi	2 C L J 189-9 C W N 961-15 M L J 331-7 Bom. L R 887-33 C 180-32 I A 193	153
Benode Behari Bose v. Srimati Nistarini Dassi	Do	153
Chandra Sang Hemat Sang v. Mohansang Hamirsang	4 C L J 181-8 Bom. L R 705-30 B 523-1 M L T 301	544
Chandrasangji Himatsangji v. Mohansangji Hamirsangji	Do	544
Chaudri Ahmad Baksh v. Seth Raghubar Dayal	7 Bom. L R 912-2 C L J 413-2 A L J 813-10 C W N 115-15 M L J 407-9 O C 7-28 A 1-32 I A 229	206
Mehdi Hasan v. Muhammad Hasan	10 C W N 706-3 A L J 405-8 Bom. L R 387-28 A 439-9 O C 106-1 M L T 106-4 C L J 295	646

Name of Case.	Volume and Page.	Column of Digest.
Chitpal Singh v. Bhairan Bakhsh Singh	10 C W N 225 = 1 M L T 7 = 16 M L J 76 = 28 A 219	744
Deoki Singh v. Matho Singh	10 C W N 338 = 1 M L T 96 = 16 M L J 109	498
— v. Mussammat Anupa	10 C W N 338 = 1 M L T 96 = 16 M L J 109	498
Dhanipal Das v. Maneshar Bakhsh Singh	4 C L J 1 = 1 M L T 205 = 8 A L J 495 = 9 O C 188 = 8 Bom. L R 491 = 10 C W N 849 = 16 M L J 202 = 28 A 570	184, 346 134, 343
— v. Raja Maneshar Bakhsh Singh	Do	Do
Ganeswar Singh v. Ganesh Das	10 C W N 969 = 4 C L J 177 = 16 M L J 365 = 8 Bom L R 719 = 3 A L J 689 = 1 M L T 308 = 33 C 1178	79
Gangamoyi Debi v. Troiluckhya Nath Chowdhri	3 C L J 349 = 10 C W N 522 = 33 C 537 = 8 Bom. L R 375 = 1 M L T 131 = 16 M L J 161	782
Gangarain Behar Lal v. The Firm of Shriram Saligram	2 N L R 162	696
Goswami Sri Ghansham Lalji v. Ram Narain	11 C W N 105 = 1 M L T 427	40
Haidar Husain Khan v. Faghfur Mirza	9 C W N 817 = 2 C L J 57 = 8 O C 270 = 27 A 383 = 15 M L J 325 = 7 Bom. L R 850 = 3 A L J 64 = 32 I A 135	928
Hemchand Devchand v. Azam Sakarlal Chhotamlal	10 C W N 861 = 8 Bom. L R 129 = 3 A L J 250 = 33 C 219 = 3 C L J 395 = 16 M L J 115 = 1 M L T 115	857
— v. Sakarlal Chhotamlal	Do	Do
Hub Ali v. Wazir-un-Nissa	3 C L J 601 = 10 C W N 778 = 28 A 496 = 3 A L J 712 = 1 M L T 297	857
Ikramul Huq v. Wilkie	33 C 893	692
Ismail Mussagee Mookerdum v. Haliz Boo	10 C W N 570 = 3 A L J 353 = 3 C L J 484 = 8 Bom L R 379 = 16 M L J 166 = 1 M L T 137 = 33 C 773	745
Jawahir Singh v. Someshar Dat	10 C W N 266 = 1 M L T 66 = 3 C L J 354 = 28 A 225	186
Jotindra Mohan Tagore v. Jaroa Kumari	3 C L J 7 = 10 C W N 201 = 1 M L T 8 = 33 C 140	694
Kachi Kaliyana v. Kachi Yuva	2 C L J 231 = 10 C W N 95 = 15 M L J 312 = 2 A L J 845 = 7 Bom L R 907 = 1 M L T 12 = 32 I A 261	796
— Rangappa v. Kachi Yuva Rangappa	Do	Do
— Kalakka Thola Udayar v. Kachi Yuva Rangappa Kalakka Thola Udayar	Do	Do
Kannepalli Suryanamayana v. Pusha Venkatramana	10 C W N 921 = 4 C L J 171 = 16 M L J 276 = 1 M L T 260 = 8 Bom. L R 700 = 3 A L J 702 = 29 M 382	479
Kunwar Sanwal Singh v. Rani Satrupa Kunwar	3 C L J 86 = 10 C W N 230 = 1 M L T 6 = 16 M L J 77 = 26 A 215	479
Lali v. Murlidhar	29 A 488 = 6 A L J 415 = 10 C W N 730 = 8 Bom L R 402 = 3 C L J 594 = 1 M L T 171	744 469

TABLE OF CASES.

ix

Name of Case.	Volume and Page.	Column of Digest.
Laliteswar Singh v. Ram Krishna Das ...	10 C W N 969 = 4 C L J 177 = 16 M L J 365 = 8 Bom L R 719 = 3 A L J 689 = 1 M L T 308 = 33 C	79
.....	1178 ...	587
Lokha Singh v. Champat Singh ...	28 A 724 *	...
Maharaja Bahadur Sir Jotindra Mohan Tagore v. Bibi Jaro Kumari ...	3 C L J 7 = 10 C W N 201 = 1 M L T 8 = 33 C 140	706
Maharaj Kumar Babu Ganeswar v. Mohant Ganes Das ...	10 C W N 969 = 4 C L J 177 = 16 M L J 365 = 8 Bom L R 719 = 3 A L J 689 = 1 M L T 308 = 33 C 1178	79
Mafik Ahmad Wali Khan v. Mussamat Shamsi Jahan Begam ...	10 C W N 626 = 3 A L J 360 = 3 C L J 481 = 1 M L T 143 = 8 Bom L R 397 = 16 M L J 269 = 28 A 482	704, 787, 919
..... v. Shamsi Jahan Begam ...	Do Do	704, 787 919
Maini Ram v. Seth Rup Chand ...	4 C L J 94 = 8 Bom. L R 501 = 10 C W N 874 = 1 M L T 199 = 3 A L J 525 = 16 M L J 300 = 33 C 1047 = 2 N L R 130	594
..... Seth v. Seth Rup Chand ...	Do Do	594
Mirza Kurratulain Bahadur v. Nawab Nuzhat-ud-dowla Abbas Hossein Khan alias Peara Sahob ...	9 C W N 938 = 1 C L J 591 = 2 A L J 758 = 15 M L J 336 = 7 Bom L R 876 = 33 C 116 = 32 I A 244	656
Monohar Lal v. Jadu Nath Singh ...	4 C L J 8 = 8 Bom. L R 489 = 10 C W N 898 = 9 O C 219 = 1 M L T 210 = 16 M L J 291 = 3 A L J 710	283
Moolla Cassim v. Moolla Abdul Rahim ...	2 C L J 236 = 15 M L J 317 = 7 Bom. L R 892 = 2 A L J 798 = 10 C W N 33 = 33 C 173 = 32 I A 177	650
Municipal Officer, Aden v. Hajee Ismail Hajee Allana ...	3 C L J 5 = 3 A L J 53 = 10 C W N 185 = 8 Bom. L R 4 = 1 M L T 1 = 16 M L J 73 = 30 B 246	576
..... v. Ismail ...	Do Do	576
Municipal Officer Allana, The v. Ismail Hajee ...	Do Do	576
Musammatt Lali v. Murli Dhar ...	3 A L J 415 = 10 C W N 780 = 8 Bom. L R 402 = 3 C L J 594 = 1 M L T 171 = 28 A 488	469
Mutsaddi Lal v. Kundan Lal ...	3 A L J 246 = 1 M L T 93 = 8 Bom. L R 371 = 16 M L J 174 = 28 A 377	469
Nawab Akbati Begum and Mirza Kurratulain Bahadur v. Nawab Nuzhatud-dowla Abbas Hossein Khan alias Pear Sahob ...	9 C W N 938 = 1 C L J 594 = 2 A L J 758 = 15 M L J 336 = 7 Bom L R 876 = 33 C 116 = 32 I A 244	656
Nawab Haidar Husain Khan v. Nawab Faghfur Mirza ...	9 C W N 817 = 3 C L J 57 = 8 O C 270 = 27 A 383 = 15 M L J 327 = 7 Bom. L R 850 = 3 A L J 44 = 32 I A 185	928
Shah Ara Begum v. Nanhi Begam ...	11 C W N 130 = 1 M L T 429	429
Nurjahan Begum v. Faghfur Mirza ...	7 Bom L R 850 = 3 A L J 64 = 27 A 383 = 9 C W N 817 = 15 M L J 327 = 8 O C 270 = 2 C L J 57	390

* This is wrongly printed as 28 A 734 in Col. 587

This is wrongly printed as 16 M L J 292 in Col. 283

THE CURRENT INDEX, 1906.

Name of Case.	Volume and Page.	Column of Digest.
Nurrutuluin Bahadur v. Nuzbat-ud-Dowla Abbas Hossein Khan ...	9 C W N 938 1 C L J 594 = 2 A L J 758 = 15 M L J 336 = 7 Bom. L R 876 = 33 C 116 = 32 I A 244 ...	656
Raja Balwant Singh v. Amolak Ram	3 C L J 85 = 1 M L T 65 = 28 A 228 = 16 M L J 160	910
Raja Chitpal Singh v. Bhairon Baksh	10 C W N 225 1 M L T 7 = 16 M L J 76 = 28 A 219	744
Ramanathan Chetti v. Murugappa Chetti	0 C W N 825 8 Bom L R 498 = 16 M L J 265 = 4 C L J 186 = 29 M 283 = 3 A L J 707	502
Rani Hemanta Kumari v. Maharaja Jagadindra Nath Rai	10 C W N 630 = 3 A L J 363 = 8 Bom. L R 400 = 1 M L T 135 = 16 M L J 272	622
Debi v. Maharaja Jagadindra Nath Roy Bahadur	Do Do	622
India in Council v. The Secretary of State for India	3 C L J 560 = 1 M L T 175	4
Sahodra v. Ganesh Parshad	10 C W N 249 = 1 M L T 64	518
Salwal Singh v. Satrupa Kunwar	3 C L J 86 = 10 C W N 230 1 M L T 6 = 16 M L J 77 = 28 A 215	744
Sheikh Hubi Ali v. Wazir-un-nissa	3 C L J 601 = 10 C W N 778 = 28 A 496 = 3 A L J 712 = 1 M L T 297	692
Sri Raja Venkata Narasimha Appa Rao Bahadur v. Sri Raja Sobhanadri Appa Rao Bahadur	3 C L J 1 = 10 C W N 161 = 3 A L J 55 = 8 Bom. L R 1 = 16 M L J 1 = 1 M L T 3 = 29 M 52	847
Sundari Debi v. The Secretary of State for India in Council	3 C L J 560 = 1 M L T 175	4
Suryanarayana v. Venkataramana	10 C W N 921 = 4 C L J 171 = 16 M L J 276 = 1 M L T 260 = 8 Bom. L R 700 = 3 A L J 702 = 29 M 382	470
Taluka of Kotda Sangani v. The State of Gondal	10 C W N 361 = 8 Bom. L R 129 = 3 A L J 250 = 33 C 219 = 3 C L J 305 = 16 M L J 115 = 1 M L T 115	857
Thakur Tirbhuwan Bahadur Singh v. Raja Rameshar Baksh Singh	10 C W N 1065 = 8 Bom. L R 722 = 16 M L J 440 = 3 A L J 695 = 4 C L J 405 = 1 M L T 265 = 9 O C 377 = 28 A 727	585
Tirbhuwan Bahadur Singh	3 A L J 695 = 10 C W N 1065 = 8 Bom. L R 722 = 16 M L J 440 = 4 C L J 405 = 1 M L T 265 = 9 O C 377 = 28 A 727	585
Tirbhuwan Bahadur Singh Rameshar Baksh Singh	Do Do	585
Tituram Mukerjee v. Cohen	3 C L J 408 = 9 C W N 1073 = 15 M L J 379 = 7 Bom. L R 920 = 3 A L J 59 = 33 C 203 = 32 I A 185	557
Vasudeva Modeliar v. Shadgopa Modeliyar	3 C L J 101 = 8 Bom. L R 497 = 10 C W N 945 = 16 M L J 299 = 1 M L T 204 = 29 M 379	172
Vonganat Swaroopathil Valia Nambidi Averga v. Cherakunnath Nambiyathan Nambudris	10 C W N 545 = 8 Bom. L R 374 = 16 M L J 160 = 29 M 94 = 4 C L J 805	312
Vonganat Swaroopathil Valia Nambidi, In re	Do Do	312
Venkata Narasima Appa Rao Bahadur v. Sobhanadri Appa Rao Bahadur	3 C L J 1 = 10 C W N 161 = 3 A L J 55 = 8 Bom. L R 1 = 16 M L J 1 = 1 M L T 3 = 29 M 52	847

TABLE OF CASES.

xi

* Name of Case.	Volume and Page.	Column of Digest.
(Other Cases.)		
Abadi Begam v. Abdul Ghaffar ...	A W N (1906), 70=3 A L J 195	809
-----v. Mahammad Abdul Ghaffar ...	Do Do	809
Abaji Annaji v. Luxman Tukaram ...	8 Bom L R 553=30 B 426	438
Abbakke Heggadthi v. Kinhiannina Shetty ...	29 M 491	689
Abbaya v. Papayya Rao Bahadur ...	29 M 94=16 M L J 8	809
Abdool Gulam Husen v. Yusufali Alibhai ...	8 Bom L R 570	294
Abdool Hoosain Mulla v. Goolam Hosain Ally ...	7 Bom L R 742=30 B 304	789
Abdoolah Bhai Sarafelli v. Ismail Bin Shaikh Badal ...	33 C 571-10 C W N 131-33 C 571	11
Abdul Ali v. Raj Chandra Das ...	10 C W N 1084	429
-----Bhai Chhotimbhai v. Nathia Parshottam ...	8 Bom. L R 369	853
-----Farah v. Musammad Sarwari ...	85 P L R 1906	402
-----Ghani v. Abdul Majid ...	A W N (1905) 200=2 A L J 667=28 A 95	298
-----Ghani v. Muhammad Fasih ...	Do Do	298
-----Hassain v. Habib Ullah ...	18 P R 1906-114 P L R 1906	388
-----Karim f. Shofiamissa ...	33 C 853	651
-----Karim Khan v. Abdul Qayum Khan ...	A W N (1906) 25=3 A L J 131=28 A 342	656
-----v. Chhoti ...	A W N (1906) 136=3 A L J 432	825
-----v. Musammad Chho. ...	Do Do	825
Abdulla Beg v. Walaiti Begam ...	120 P R 1906	769
-----Khan v. Ramdas ...	2 N L R 146	672
Abdul Rahman v. Sukhdayal Singh ...	A W N (1905), 176-2 A L J 507=28 A 30	54
-----Sahib v. Abdulla Sahib ...	16 M L J 286	55
-----Rasheed v. Jogesh Chandra Roy ...	11 C W N 153	93
Abraham Pillai v. Donald Smith ...	29 M 324	227
Abu Haji Suleman v. Haji Jan Mahomed Haj Mahomed ...	8 Bom L R 648	533
Abul Hasan Khan v. Bhura ...	A W N (1906) 226=3 A L J 763=28 A 763	125
Abu Muhammad Khan v. Kaniz Fizza ...	2 A L J 652=A W N (1905) 210=28 A 185	120
Achey Lal v. Janki Prasad ...	3 A L J 735=A W N (1906) 271	121
Adakkalam Chettiar v. Ramalinga Chettiar ...	29 M 320	820
Adulla v. Punnu Ram ...	42 P R 1906	378
Advocate, in the matter of an ...	4 C L J 259	576
-----, a Vakil, a Pleader a Mukhtear, In the matter of an ...	4 C L J 262	30
Advocate-General, The v. Adamji Mahomed-ah ...	8 Bom L R 565=30 B 474	296
Afraz Mollah v. Kulsamma Bibee ...	10 C W N 176=4 C L J 68	89
Ahnad Baksh v. Lalta Prasad ...	A W N (1905) 263=28 A 238	260
-----Ghaus Khan v. Lalta Prasad ...	A W N (1906) 143=3 A L J 422=28 A 631	265
-----Shah v. Walidad Khan ...	83 P L R 1906=98 P R 1906	761
Ahmedabad, The Advance S and W Co Ltd. v Luxmishanker Deoshanker ...	7 Bom L R 240=30 B 173	233
Ahmed Ghaus Khan v. Rai Bahadur Sahu Lalta Pershad ...	A W N (1906), 143=3 A L J 422=28 A 631	265
Aimadur Mondul v. Makhan Lal Dey ...	10 C W N 904=33 C 1015	581
Aiyappan Keshavan v. Kanakku Nilakantan Govindan ...	21 T L R 174	634
Ajudhia Prasad v. Har Dayal ...	3 A L J 541=A W N (1906) 249	817
Akshoy Kumar Ghose v. Commissioners of the Port of Calcutta ...	33 C 1243=3 C L J 585	74
Akhoy Kumar Mitter v. Gopal Kalnini Debi ...	10 C W N 952=33 C 1010	361
Alagappa Chetty v. Chidambaram Chetty ...	29 M. 526=1 M L T 407	668

Name of Case.	Volume and Page.	Column of Digest.
Alagappa Chetty, P M P A v. N S T V Chidambaram Chetty ...	29 M 526 = 1 M L T 407	668
Alamgir Khan v. Kamrunnessa Khanum ...	4 C L J 442	440, 605, 655
Ali Bakhsh v. Sobha Singh ...	23 P R 1906 = 107 P L R 1906	755
Alibhai Sarafali v. Ismail Bin Sheikh Badal ...	2 C L J 511 = 10 C W N 184 = 38 C 571	11
Ali Hasan v. Ori Lal ...	3 A L J 501 = A W N (1906) 207	409
— Husain Khan v. Tasadduq Husain Khan ...	A W N (1905) 219 = 2 A L J 612 = 28 A 124	750
Alimea Chowdhuri v. Roshun Ali Matbas ...	3 C L J 533	910
Alimuddin v. Ishan Chandra Dey ...	3 C 693	501
Alimullah Khan v. Abadi Begam ...	A W N (1906) 256	647
Ali Sajjad v. Bhajan Singh ...	3 A L J 370 = A W N (1906) 157	244
Allah Baksh v. Gobind Ram ...	10 P L R 1906 = 2 P R 1906	676
— Dei Begam, v. Kesri Mal ...	A W N (1905) 199 = 2 A L J 576 = 28 A 93	166
Amanat-ul-Lah Khan v. Saradha Prasad ...	A W N (1906) 133 = 3 A L J 423 = 28 A 613	238
Amar Nath v. Municipal Committee, Kartapur ...	86 P R 1906	663
Amba Debva v. Jnanoda Sundari ...	1 C L J 254	363
Ambalal v. Pascal Seel ...	8 Bom L R 973	419
Amba Shankar v. Ganga Singh ...	9 O C 97	649
Ambica Charan Das v. Kala Chandra Das ...	10 C W N 422	303, 433
— Chakravarti v. Dy a Gazi ...	10 C W N 497	72
Amcer Chand v. Bakshi Shiva Persad Singh ...	4 C L J 573	687
Amin-ul-lah v. Hajira ...	3 A L J 767 = A W N (1906) 222	120
Amir Khan v. Ruri ...	14 P R 1906	386
— Muhammad Shah v. Sultan Khan ...	158 P L R 1906	X
Amirulla Mahomed v. Nazir Mahomed ...	3 C L J 155	84
Amolab Bamechand v. Dhondi Khandu Bhosle ...	8 Bom L R 360 = 30 B 466	105
Amolal Shah v. The Collector of Lahore ...	115 P R 1906	58
Amrita Sekhar Banerjee v. Bejoy Chand Mahtab ...	4 C L J 547	796
Anamalay Pillay, S. v. Po Lun ...	3 I. B R 228	664
Ananda Chandra Sen v. Parbati Nath Sen ...	4 C L J 198	6, 174 363,
— Hari Basak v. Secretary of State for India in Council ...	3 C L J 316	156, 99.
Ananda Moyi v. Lakshi Chandra ...	3 C L J 274 = 33 C 329	847
Ananta Coomari Dassi v. Radharani Dassi ...	3 C L J 199	46
Anjuman Islamia of Muttra, the v. Nasir-ud-din ...	A W N (1906) 59 = 3 A L J 124 = 28 A 884	16
Annamali Chettiar v. Appaya Naik ...	1 M L T 145 = 16 M L J 372 = 29 M 426 (F. B.)	887
— v. Malayandi Appaya Naik ...	Do	887
Annamalayappa Pillai Chinnia Pillai v. Ramasastriar Venketachalam Iyer ...	21 T L R 194	636
Anmoda Prasad Banerjee v. Nobo Kessore Roy ...	9 C W N 952 = 33 C 560	532
Annu Mal v. The Collector of Bareilly ...	A W N (1906) 17 = 3 A L J 100 = 28 A 315	785
Ansa Tuka v. Kanchappa Sawappa ...	8 Bom L R 669	437
Anwar Hasat v. Umatal Karim ...	145 P R 1906	764
Aparna Charan Ghose v. Karim Ali ...	10 C W N 527 = 4 C L J 527	81
Appacotty Mudali, N. Mutthukunnapappa Mudali ...	16 M L J 558	I
Appasami Thevan v. Virappa Thevan ...	29 M 362	900
Apurba Krishna Roy v. Chundermoney Debi ...	10 C W N 354 (F. B.)	626
Apurna Churn Ghose v. Kasam Ali ...	10 C W N 527 = 4 C L J 527	81
Azayalprath Kunhi Pocker v. Kanthulath Ahmad Kutti Haji ...	29 M 62	496
Äri Raja Sinhadi Appa Rao Prattipati ...	29 M 29	560
Arjau Singh v. Machchal Singh ...	3 A L J 601 = A W N (1906) 233	241

TABLE OF CASES.

xiii

Name of Case.	Volume and Page.	Column of Digest.
Arunachallam Chettiar v. Kadir Rowthen	1 M L T 315 = 16 M L J 486 = 29 M 556	111
— A. L. A. R. R. M. v. —	Do Do	411
Arunachella Chettiar v. Ramiah Naidu	16 M L J 533	925
Arunachella Rao v. Rangiah Appa Rao	16 M L J 563 = 1 M L T 318 = 29 M 549	598
Arunachellam Chetty v. Ramanathan Chetty and Alamelu Achi...	29 M 909	251
Ashid bai v. Abdulla Haji Mahomed	8 Bom L R 652	42, 190, 425 645, 848
Ashutosh Dar v. Amir Mollah	3 Bom L R 758	731
Assobai v. Noorbai	3 C L J 337	80
Asutosh Roy v. Harinarain Singh Deo	3 Bom. L R 245	652
Atar Singh v. Prem Singh	3 C L J 143	71
Attar Singh v. Rala Singh	12 P R 1906 = 108 P L R 1906	386
— v. Sant Singh	139 P R 1906	147
Aulia Bibi v. Ala-ud-din...	113 P R 1906	708
Aulla Bibi v. Ala-ud-din...	3 A L J 519 = A W N (1906), 210 = 28 A 715	657
Aung Baw v. Tun Gaung	A W N (1906), 210 = 3 A L J 519 = 28 A 715	657
Avanasi Gounder and others v. Nachanmal	3 L B R 129	252
Awadh Sarju Prasad Singh v. Sita Ram Singh	16 M L J 41 = 1 M L T 25 = 29 M 195	207
Aya Singh v. Gurdial	A W N (1906), 261 = 3 A L J 785	500
Ayenuddin Nasya v. Srish Chandra Banerjee	72 P L R 1906	590
Azinat Singh v. Kalwant Singh	11 C W N 76	728
Aziz Begum v. Mohan Lal	71 P R 1906	790
Babaji Khanduji v. Kushaba Ramaji	39 P R 1906 = 132 P L R 1906	679
Baban Singh v. Jaimangal Singh	3 Bom L R 218 = 90 P 415	104
Baba Partab Singh v. Fattab	A W N (1906) 86	305
Babu Bhan Pratab Sahi v. Mahant Bisheswar Dass...	120 P L R 1906 = 45 P R 1906.	758
— Ganga Nath v. Rabel Nath	9 O C 232	137
— Jan v. The Secretary of State for India in Council and the Chairman, Gaya Municipality	143 P L R 1906	409
— Lal v. Ram Kali	4 C L J 256	59
— Prasad v. Khiali Ram	A W N (1906) 28 = 3 A L J 40	124
— Ram v. Bank Behari Lal	A W N (1906) 203 = 3 A L J 828	919
Bachai Singh v. Chaterpal Singh	3 A L J 424 = A W N (1906) 184	156
Bachcha v. Gajadhar Lal	O C 352	485
Bachchi alias Bachia v. Bachchi	A W N (1905) 173 = 2 A L J 702 = 28 A 44	330
Bachcho Kunwar v. Dharam Das	3 A L J 513 = A W N (1906) 219 = 28 A 747	122
Badam Kumari v. Suraj Kumari	A W N (1906) 34 = 3 A L J 155 = 28 A 347	488
Badiad* Din Ahmed v. Nizamuddin Haider	3 A L J 209 = 28 A 458 = A W N (1906), 83	497
Badri Mal v. Gopal	33 C 386 = 10 C W N 501	28
Bageshri Dayal v. Pancho	130 P R 1906	620
Bagwan v. Har Prasad	A W N (1906) 89 = 3 A L J 314 = 28 A 473	488
Bahadoo v. Fattah Khan	111 P R 1906	768
Bahadur Singh v. Yipu	82 P R 1906	318
— Lal v. Jadhao	28 P R 1906	440
Bahu bin Abaji Gurav v. Ragnath Krishna	2 N L R 174	613
Bai Dahi v. Hargovindas	7 Bom. L R 936 = 30 B 229	510
— v. Margovindas Kuberdas	8 Bom. L R 229 = 30 B 455	235
— Hansa v. Abdulla Mustafa	Do Do	235
— Jaiji v. N C Macleod	7 Bom. L R 634 = 30 B 122	649
Baij Nath Ram Goenka v. Hem Chunder Bose	8 Bom. L R 122 = 30 B 493	998
	10 C W N 959	595

Name of Case.	Volume and Page.	Column of Digest.
Baisnab Chandra Das v. Ramdhon Dhor	11 C W N 139	37
Bakhtwar Singh v. Brij Mohan Lal	A W N (1906) 10 = 3 A L J 127	488
Bakreedan v. Ummatul Fatema	3 C L J 541	643
Bala v. Nur Muhammad	133 P R 1906	406
Balabhadra Persad Singh v. Najiban alias		
Basmatia	4 C L J 370 = 11 C W N 85	520, 738, 840
Balaji v. Tulsiram	2 N L R 90	707
bin Khanduji Patil v. Kushala bin Ramji		
Patil	30 B 415 = 8 Bom. L R 218	104
Balasundara Mudelly v. Rajalingam Chettiar	29 M 172	369
Balbhaddar Pande v. Basdeo Pande	3 A L J 650	456
Baldeo Prasad v. Sheo Diah	3 A L J 441	698
Prasad v. Sheo Nandan	A W N (1906), 14 = 3 A L J 743	152
Sahai v. Nagai Ahir	3 A L J 850	765
Baldevpuri Kailaspuri v. Gopaldas Tribhu-		
wandas	8 Bom L R 756	297
Ballu v. Gur Dyal	95 P R 1905 = 47 P L R 1906	349
Banarsi Prasad v. Fazal Ahmad	A W N (1906) 9 = 3 A L J 25 - 28 A 298	866
Banku Behari Banerji v. The Administrator- General of Bengal	3 C L J 422 = 10 C W N 673 - 33 C 713 (F. B.)	22, 344 177
Bansi Dhar v. Sital Prasad	3 A L J 613 - A W N (1906) 253	
Banku Behari Banerjee v. The Administrator- General of Bengal	3 C L J 422 (S. B.) = 10 C W N 673 = 33 C 713	22
Banmali Pande v. Bisheshar Singh	3 A L J 731 = A W N (1906) 300	711
Bappu v. Kumaran	16 M L J 548 = 1 M L T 395	694
Bapuji Dorabji v. Dastur Kaikusbru	8 Bom L R 678	46
Kale v. Yagosa Laid	2 N L R 91	819
Barhamdeo Prasad v. Barfarsi Prasad	3 C L J 119	284
Barkat Ali v. Hussain Khan	6 P R 1906 = 61 P L R 1906	808
v. Ganga Ram	34 P L R 1906	632
Baroda Prasad Chatterjee v. Madhab Chandra Ghose	33 C 1345	431
Baru v. Kundan	A W N (1906) 204 = 3 A L J 807	497
Basanta Kumar Singha v. Jogendra Nath Singha	3 C L J 98 = 10 C W N 236 = 33 C 371	504 605
Basant Lal v. Gopal Parshad	3 A L J 463	
v. Kunji Lal	2 A L J 450 = A W N (1905) 165 = 28 A 21	292
Basant Singh v. Bijai Singh	9 O C 1	587
Basheshar Das v. Gobind Ram	114 P R 1906 - 159 P L R 1906	346
Basiruddi v. Kailas Kamini Devi	33 C 113	922
Bau Ditta v. Mussammat Ganga Devi	119 P L R 1906	790
Baul Chandra Chakravarti	33 C 186 = 10 C W N 533	98
v. Nistarini Debi	Do	98
Behari v. Sadho Mal	73 P L R 1906	156
Lal Misr v. Jagannath Pershad	A W N (1906) 152 = 3 A L J 845 = 28 A 651	626
Singh v. Mukat Singh	A W N (1906) 3 = 3 A L J 140 = 28 A 273	245
Bejoy Chand Mahatap v. Atulya Charan Bose	32 C 953 = 3 C L J 46	797
Belbhadar Pershad Singh v. Sheikh Barkat Ali	4 C L J 370 = 11 C W N 85	840
Benin Menahim Yousaf v. John Poleologo	8 Bom L R 580	791
Beni Pershad v. Chaturi Tewary	33 C 444 = 4 C L J 63	88
Koeri v. Chaturi Tewary	Do	88
Borhamdeo Pershad v. Tara Chand	33 C 92 = 9 C W N 989	713
Prasad v. Tara Chand	9 C W N 989 = 33 C 92	713
Bhaba Prasad v. Jagadendra Nath Rai	33 C 15	539
Bhabatosh Banerjee v. Shaikh Soleman	10 C W N 717 = 33 C 584 = 4 C L J 340	792, 879

* In Col. 797 this is wrongly printed as 32 C 253

TABLE OF CASES.

xv

Name of Case.	Volume and Page.	Column of Digest.
Bhabatosh Banerjee v. Soleman ...	33 C 584 = 4 C L J 340 = 10 C W N 717	792, 879
Bhadder v. Khair-ud-din Husain ...	3 A L J 760 = A W N (1906) 305	422
Bhagabati Debya Chowdhurani v. Basanta Kunnari Debi ...	11 C W N 101	87
Bhag Mal v. Pir Buksh ...	32 P L R 1906	144
Singh v. Baswa Singh ...	50 P R 1906	692
Bhagwan Das v. Janki ...	A W N (1905) 268-28 A 249	445
... v. Sukhdei ...	AW N (1906), 10=28 A 300-3 A 1, J 896	627
... v. Har Pershad ...	111 P R 1906	235
... Narotamdas v. Kanji Deoji ...	7 Bom. L R 611 = 30 B 205	381
Bhagwan Singh v. Gurdial Singh ...	8 P L R 1906	379
Bhagwan v. Ram Kuar ...	38 P L R 1906	289
Bhagwant Sahai v. Pashupathi Nath Bose ...	3 C L J 257 = 10 C W N 564	311
Bhaghwat Kuri v. Baldeo Rai ...	A W N (1906), 309	795
Bhai Harman Singh v. Jiwan ...	7 P R 1906 = 56 P L R 1906	636
Bhairo v. Ram Charan ...	3 A L J 6 = A W N (1906) 6 = 28 A 292	855
Bharon v. Ram Baran ...	A W N (1906) 6 = 3 A L J 6 = 28 A 292	855
Bhajahari Saha Banikya v. Behary Lal Basak ...	4 C L J 162 = 33 C 881	611
Bhanaji Raoji Katoji v. Joseph De Briv ...	7 Bom. L R 995 = 30 B 226	313
Bhandi Singh v. Ramadhin Roy ...	10 C W N 991	63
Bhanjan Ram v. Gopal Ram ...	92 P R 1906 = 126 P L R 1906	599
Bhari v. Pir Bukhsh ...	107 P R 1906	820
Bhartu v. Dalip ...	3 A L J 672 = A W N (1906), 278	686
Bhalla v. Krishna Sastri ...	16 M L J 413 = 29 M 508	887
Bhau Mangesh Wagle v. Ahmodbhoy Habibhoy ...	8 Bom. L R 312	104
Bhavani Shankar Ram rao v. Timmauna Ram Bhutta ...	8 Bom. L R 407 = 30 B 508	16
Bhavani Parshad Singh v. Sahib Din Lal ...	9 O C 144	535
Bhaya Dirgaj Deo v. Pande Fateh Bahadur Ram ...	3 C L J 521	658
Bhiku Ravlu v. Puttu Timmappa ...	8 Bom L R 99	487
Bhimraj Deokisan v. Mt. Rahi ...	2 N L R 113	738
Bhimrao Ramrao v. Ayyappa Yellappa ...	8 Bom L R 858	589
Bholai Naskar v. Alach Naskar ...	3 C L J 158	229
... Ram v. Ajudhia Prasad ...	3 A L J 81 = A W N (1906) 40 = 28 A 328	164, 722
Bhola Nath v. Not Ram ...	A W N (1906) 185 = 3 A L J 800	6
... Singh v. Alim ...	112 P L R 1906	616
Bhole v. Fakir ...	62 P R 1906 = 136 P L R 1906	396
Bhudilal Manji v. Morarji Premji ...	8 Bom L R 522	281
Bhukun Lal v. Mir and Jagia Raot ...	2 N L R 110	466
Bhuray Brahmin v. Lala Vishwanath ...	2 N L R 170	729
Bhutnath Mondol v. Secretary of State for India in Council ...	10 C W N 1085	483
Bhutta v. Khuda Baksh ...	97 P R 1906	400
Bihari Lal Misr v. Jagarnath Prasad ...	28 A 651 = 3 A L J 845 = A W N (1906) 152	626
Bindajee Laxuman v. Mathurabai ...	7 Bom L R 809 = 30 B 152	464
... Triputikar v. Mathurabai ...	Do Do	464
Biraj Mohini Dasi v. Chintamani Dasi ...	3 C L J 197 = 10 C W N 565 (foot note)	99
Birjandann Lal v. Kunwari ...	A W N (1906) 174 = 3 A L J 561	754
... v. Musaminat Kunwari ...	Do Do	754
Bisheshar Das v. Ram Parshad ...	3 A L J 379 = A W N (1906) 142 = 28 A 627	228
Bichnu v. Lal Singh ...	71 P L R 1906 = 55 P R 1906	545
Bishun Singh v. Raja Patesari Partap Narain Singh ...	A W N (1906), 169	841
Bisneswar Prasanna Sefi v. Bhagwati Prasanna Sen ...	3 C L J 606	520

Name of Case.	Volume and Page.	Column of Digest.
Hogar v. Karam Singh ...	141 P R 1906	441
Botra Thakur Das v. The Collector of Aligharh ...	3 A L J 439 = A W N (1906), 150 = 28 A 593	697
Boja Sollappa Reddy v. Vridhachalla Reddy...	1 M L T 323 = 16 M L J 569	108, 352
Bolton v. Donald ...	A W N (1906), 56 = 3 A L J 194	926
— v. F G Donald ...	Do Do	926
Roseck and Co v. Mandleston ...	70 P R 1906	215
Brāja Bala Debī v. Gurudas Mandal ...	3 C L J 293 = 33 C 487	267, 545, 828,
Brij Kishore v. Madho Singh ...	A W N (1905) 279 = 3 A L J 27 = 28 A 279	698
— Kumar Roy v. Dhanukdhari Raut ...	10 C W N 976	96
— Mohan Lal v. Ali Husain ...	9 O C 275	281
Brojo Lal Rai Chowdhury v. Tara Prasanna Bhattacharji ...	3 C L J 188	296, 320, 589, 910
Budreo Das Mirzāin v. Chooni Lal Johwry ...	33 C 789 = 10 C W N 581	296
Bura Ram v. Mitha Ram ...	103 P R 1905 = 45 P L R 1906	310
Buthal Chaudhri v. Jogi Chaudhri...	3 A L J 617 = A W N (1906) 239	132
Camani v. The Administrator-General of Madras ...	20 M 290	384
Casimnati Javerbhui Pirbhui, In re...	3 Bom L R 883 = 30 B 591	462
Chairman Municipal Council Rajahmundry v. Venkateswaralu ...	16 M L J 53	623
Chairman Howrah Municipality, the v. Khettra Krishna Mitra...	10 C W N 1044 = 4 C L J 343 = 33 C 1290	195
— of the Howrah Municipality v. Khettra Krishna Mitra ...	Do Do	195
— of the Purnea Municipality v. Siva Sankar Ram...	33 C 899	288
Chajju v. Dalipa ...	51 P R 1906 = 124 P L R 1906	304
Chajmal Das v. Sirya ...	3 A L J 625 = A W N (1906), 254	128
Chakauri Devi v. Sindari Devi ...	3 A L J 338 = A W N (1906), 144 = 28 A 590	756
Chakka Subbiah v. Maddali Lakshminarayana...	29 M 298	412
Chandan Singh v. Ram Singh ...	A W N (1906), 7	704
Chander Pershad v. Sham Koer ...	3 C L J 131 = 33 C 676	230
Chandi Charan Mandal v. Banke Behari Mandal...	10 C W N 432	32
Chand Mea v. Srimati Asima Banu ...	10 C W N 1024	833
Chandra Bhan v. Girwar Lal ...	A W N (1906), 97 = 3 A L J 420 = 28 A 475	122
Chandra Kishore Roy v. Prasanna Kumari Dasi...	4 C L J 523 = 10 C W N 864	22
Chandrama Bibi v. Mahomed Isak...	2 N L R 158	655
Chandranath Chakrabarti v. Jadabendra Chakrabarti ...	A W N (1906), 173 = 28 A 689	501
Chandraprasad Hariprasad v. Varajlal Umedram ...	3 Bom L R 644	348
Chandra Prosad v. Sham Koeri ...	3 C L J 131 = 33 C 676	239
— Sekhar Kar v. Nafar Chandra Kundu...	4 C L J 555	425
Chattarpal Singh v. Natha ...	A W N (1906) 26 = 3 A L J 38	487
Chattray v. Nawala ...	3 A L J 639 = A W N (1906) 257	572
Chaturbhuj v. Lachman Singh ...	A W N (1905) 250 = 28 A 196	885
Chaudhari Mehi Lal Singh v. Lakshpat Singh...	A W N (1906) 218	762
Chaudhri Allah Baksh v. Gobind Ram ...	10 P L R 1906 = 2 P R 1906	676
Chennam Raja Manmar v. Tadikonda Ramachandra Rao ...	20 M 155	86, 927, 940
Chenni Makotha v. Ateputan Kunju Panikan...	21 T L R 219	635
Cheravath Parkum Thalanga! Bapu v. Nevoth Parkum Thalanga! Kanaran ...	1 M L T 395 = 16 M L J 548	684
Chettiatill Muhammad v. Kunhi Koru ...	29 175	179
Chhajju v. Dalipa and Prem Singh ...	124 P L R 1906 = 51 P R 1906	407
— Gir v. Diwan ...	3 A L J 717 = A W N (1906), 289	485
Chhajmal Das v. Sirya ...	3 A L J 625 = A W N (1906), 254	128

TABLE OF CASES.

•XVII

Name of Case.	Volume and Page.	Column of Digest.
Chhanga Mal v. Joti Parshad ...	75 P L R 1906	890
Chhannu Tiwari v. Dwarka Kuar ...	A W N (1906), 137 - 3 A L J 433	490
-v. Dwarka...	A W N (1906) 137 = 3 A L J 433	890
Chattar Mal v. Baij Nath ...	28 A 712 = 3 A L J 634 = A W N (1906), 202	708
Chhiddu v. Kuar Sen ...	3 A L J 554 = A W N (1906) 280	27
Chhitar Singh v. Rup Singh ...	3 A L J 603 = A W N (1906) 247	127
Chhotu v. Jawahir ...	A W N (1906) 29 = 3 A L J 23 = 28 A 293	853
Chidambaram Chettiar v. Sami Iyer alias Arunachalamaiyer ...	13 M L J 427 - 1 M L T 351	888
-v. Sri Rangachariar...	15 M L J 475 - 29 M 106	501
Chimtnal Balabhai v. N C Macleod ...	8 Bom L R 794	256
Chingacham Vittil Sankaran Nair v. Chingacham Vittil Gopala Menon ...	1 M L T 412	371
Chinnasawmy Mudaliar v. Ambalavana Mudaliar ...	29 M 48	862
-v. Krishna Reddy ...	16 M L J 146	695, 849
Chinnam Rajamannar v. Tadikonda Ramachandran Rao ...	29 M 155	36, 927, 940
Chintamani Aditya v. Haladar Maiti ...	2 C L J 153 - 10 C W N 601	290
Chiragh Bibi v. Hassan ...	19 P R 1906 - 70 P L R 1906	836, 889
Chiruvolu Punnamma v. Chiruvolu Perumai ...	1 M L T 183 = 16 M L J 307 (F.B.) 29 M 390	506
Chiruvolu Punnamma v. Chiruvolu Venkatapiah ...	1 M L T 183 - 16 M L J 307 (F.B.) - 29 M 390	506
Chithambara Kuttalam Perumal v. Manikavasagam Chaudana Muthu ...	21 T L R 70	320
Chitkali Koer v. Mathuralal ...	3 C L J 220	900
Chittamma v. Gavaramma ...	16 M L J 136 - 29 M 225	255
Chote v. Jawahar ...	A W N (1906) 29 - 3 A L J 23 - 28 A 293	853
Chowakaran Makki v. Vayapparath Kunhi Kuti Ali ...	29 M 173	812
Chuni Lal v. Mehr Chand ...	29 P R 1906 = 97 P L R 1906	829
-Manlal Gandhi v. Kirpa Shankar Bhagwanji Vyas ...	8 Bom L R 838	834
-v. Srimandir Das ...	9 C C 125 (B)	812
Coharia Rudrani Koer v. Ram Pertab Mull ...	11 C W N 158	264
Collector of Madrat v. Kalka Pershad ...	A W N (1906), 171 - 3 A L J 665	246
-Salem v. Bateha Sahib ...	16 M L J 468 - 1 M L T 421	114
-v. Peer Bateha Shib ...	Do	114
Collector of Aligarh, v. the Bohra Thakur Das ...	3 A L J 435 - 28 A 593 = A W N (1906), 150	697, 706
Collector of Chingelput for the Secretary of State for India v. Subraya Mudaliar ...	22 M 181	116, 241
Collier, Mr. v. Mrs. L Baran ...	2 N L R 34	429, 834
Dalgleish v. Damodar Narain Chowdhry ...	33 C 1286	173
Damodar Das v. Inayat Hussain ...	2 A L J 626 = A W N (1905) 221 = 28 A 135	221
-Lakmidas v. Atmaram Narayan ...	8 Bom L R 344	739
-Vithoba v. Nainsukh Rajmal ...	8 Bom L R 942	220
Darves Haji Mahamad Sidik v. gairuddin Haji Badrudin ...	8 Bom L R 731 = 30 B 603	297
Daryao Shah Gond v. Teran Shah Gond ...	2 N L R 45	220
Dasaundhi Ram v. Khazam Dass ...	112 P R 1906	803
Datto Valad Totaram v. Ram Chandra Totaram ...	7 Bom L R 669 = 30 R 119	434
Daulat v. Mathura ...	3 A L J 207 = 28 A 556	749
Dayamani Debiv. Strinibash Cundu ...	33 C 842	516
Daya Ram v. Sohel Singh ...	110 P R 1906 (F.B.)	405
Dayaram Jagjivan v. Gordhondas Dayaram ...	8 Bom L R 885	47, 370
Deba v. Rohitagi Mal ...	A W N (1906) 95 = 3 A L J 384 = 28 A 479	622

In col 246, this wrongly printed as 3A LJ 556 28 A 655

Name of Case.	Volume and Page.	Column of Digest.
Debendra Nath Dutt and Banku Behari Banerjee v. The Administrator-General of Bengal ...	3 C L J 422 (F.B.) = 10 C W N 678 = 33 C 713	22, 344
Debendra Prosad Ghose v. Parosh Nath Mitter...	4 C L J 119	96
Debi Das v. Aizaz Husain ...	2 A L J 749 = A W N (1905) 191 = 28 A 72	247
— v. Ejaz Hussain ...	Do Do	247
— v. Narain Pershad ...	9 O C 35	282
Delhi London Bank Ltd. v. Kunwar Partab Singh ...	3 A L J 585 = A W N (1906), 286* = 1 A L T 247 = 28 A 771 (F. B.)	258
Delhi and London Bank Limited v. Partab Singh ...	Do Do	253
Deoki Nandan v. Gehna Mal ...	125 P R 1906	301
Deorno Gopalji Kumbi v. Sada Shed ...	2 N L R 17	8
Deputy Commissioner, Sitapur for Nabinagar Estate, the v. Auseri Singh ...	9 O C 104	505
Devi Chand v. Gureharan Singh ...	127 P L R 1906	407
Dhan Debi v. Ganshi Ram ...	38 P R 1906 = 89 P L R 1906	392
Dhanraj Pandan v. Sheo Raj Pandey ...	A W N (1906), 194	364
— v. Bhakur Ujain Singh ...	93 P L R 1906 = 31 P R 1906	250
— v. Ujain Singh ...	31 P R 1906 = 93 P L R 1906	250
Dharmadas Kundu v. Anulya Dhan Kundu ...	10 C W N 765 = 33 C 1119	474
Dhuran Mall v. Panna Lal ...	3 A L J 381 = A W N (1906), 165	627
Dhumimal v. Kalu ...	67 P R 1906	396
Digambari Debi v. Dhan Kumari Bibi ...	10 C W N 1074 = 4 C L J 476	494
Dil Kunwar v. Udai Ram ...	A W N (1906), 316	129
Dinaji Parbhaji v. Dattola alias Santoshrao ...	2 N L R 115	805
Dindaval v. Sheoraj Singh ...	2 N L R 116	707
Dip Singh v. Ram Charan ...	3 A L J 608 = A W N (1906), 252	126
Doddappa Tippanna v. Somappa Ningappa ...	8 Bom L R 550	491
Domi Lal Sahu v. Roshan Dubey ...	11 C W N 107 = 33 C 278	507
Domingo M. Parriera v. Gabriel F. Goncalves...	8 Bom L R 93	736
Dorasawmy Boush Packiri v. N. Idangapiran- than ...	1 M L T 69	413
Dose Thippamma Bhutta v. Krishna Tautri ...	23 M 508 16 M L J 413	887
Dost Mohammad Khan v. The Upper India Bank Ltd. ...	3 A L J 628 = A W N (1906), 255	67
Dost Muhammed Khan v. The Bank of Upper India Ltd. ...	A W N (1906), 44 = 3 A L J 129	67
— Muhammad Khan v. Sohan Singh ...	83 P R 1906	604
Dubri Lal v. Dholu Rai ...	3 A L J 619 = A W N (1906), 243	563
Dulma Kuar v. Mahadeo Prasad ...	A W N (1906), 80 = 3 A L J 312 = 28 A 436	868
Dulmha Kunwar v. Mahadeo Prasad ...	Do Do	868
Dungariya v. Nand Lal ...	A W N (1906), 182 = 3 A L J 534	883
Duni Chaud v. Atma Singh ...	132 P R 1906	258
Durga Charan Pathak v. Rajubala Debi ...	4 C L J 469	205
— Das v. Fakir Chaud ...	47 P R 1906	278
— Nandi v. Dewaraj Agarwalla ...	3 C L J 112 = 10 C W N 297 = 33 C 306	288
— Deji v. Balmakund ...	3 A L J 688 = A W N (1906), 287	500
— alias Gulab Deji v. Balmakund ...	Do Do	500
Durgapati Debi v. Sourabini Debi ...	10 C W N 955 = 33 C 1001	33
Durgamuni Debya v. Ambica Charan Sarna ...	4 C L J 367	163
Durga Prasad v. Lachhi ...	3 A L J 738 = A W N (1906), 271	152
— v. Musammal Lachi ...	Do Do	152
— Shankar v. Gur Charan ...	3 A L J 884 = A W N (1906), 1	811
Durgozi Row v. Fakeer Sahib ...	1 M L T 433	885
Dwarkanath Ramachander v. Norman Cron- tome Macleod... ..	2 N L R 68	846

TABLE OF CASES.

XIX

Name of Case.	Volume and Page.	Column of Digest.
Dwarka Nath Biswas v. Debendra Nath Tagore	33 C 1232	371
Mitra v. Bankutesh Lal Mitra	10 C W N 437	92
Saha v. Ledu Sikdar	33 C 502	785
Bapu Mathai v. Aiyappan Mathvan	21 T L R 119	359
Eastern Mortgage and Agency Co. Ltd. The, v. Rebati Kumar Roy	3 C L J 260	35
Eswaran Perumud Nambiar v. Kanuku Siva- gurumathan Padmanaban	21 T L R 142	360
Edward Dalglish v. Raudhari Sahu	4 C L J 509	48
Elahi Baksh v. Khewni	16 P R 1906	405
Elumalai Chettiar v. Natesa Mudaliar	29 M 81	112
Emam Ali v. Baij Nath Ram Sahu	3 C L J 576 10 C W N 551	33 C 613
Emma Agnes Smith v. Thomas Massey	8 Bom L R 322 30 B 500	181, 592, 597, 697, 787
Ethel Gorgina Kerr v. Clara B. Ruxton	4 C L J 510	19
Fama v. Tetka	2 N L R 178	612
Faqir Muhammad v. Fazal Muhammad	16 P R 1906 66 P L R 1906	71
Fatid v. Mitho	143 P R 1906	387
Fazal Din v. Narain Singh	128 P R 1906	53
Husain v. Jiwan Ali	A W N (1906), 125 3 A L J 430	259
Ferguson v. Um Chand Boid	33 C 313	350
Francis Ghosal v. Gabri Ghosal	8 Bom L R 770	357
Gajadhar Lal v. Alliance Bank of Simla Ltd.	3 A L J 445 28 A 660	19, 362
Ganapathy Ayyar v. Alagasinga Bhutler	29 M 531 16 M L J 435 1 M L T 127	911
K S v. Sri Vedavyssa Alagasinga Bhutler	Do	17
Ganesh v. Bhagirath	A W N (1906) 181	17
Singh v. Kashi Singh	A W N (1906) 136 28 A 621	490
Ganesh Singh v. Arur Singh	8 P R 1903 150 P L R 1906	293
v. Sardar Arur Singh	Do	458
Ganesh Lal v. Ajudhia Prasad	A W N (1906) 30 3 A L J 85 28 A 345	586
v. Suraj Mal	89 P R 1906	508
Ganga Bai v. Shridhar Annaji Kulkarni	8 Bom L R 642	29
Ganga Bishun Singh v. Mahomed Jan	33 C 1193 10 C W N 948	279
Prasad v. Ajudhia Prasad	A W N (1905) 167 2 A L J 682 28 A 24	71
v. Kura	A W N (1906) 61 3 A L J 168 28 A 408	648
Ram v. Amir Chand	66 P R 1906	287
v. Mihir Lal	A W N (1906) 73 3 A L J 187 28 A 416	867
Singh v. Badar-ud din	2 P R 1905 (Rev) 57 P L R 1906	809
Ganges Manufacturing Company v. Indra Chand	33 C 1169	149
Gangulakurti Sanyasi Lingam v. Nidugonda Gavaramma	16 M L J 411	68
Ganpat v. Dhani Ram	76 P R 1906 125 P L R 1906	465
Row v. Ananda Row	A W N (1905) 206 28 A 104	616
Bhonsle v. Ganpat Rao Gopal Ghatate	2 N L R 32	26
Tatya Mahinkar v. Anna bin Anand Rao	7 Bom L R 803 30 B 161	620
Ganpatra Mahadasa v. Joomabhai	2 N L R 150	55
Garurduj Prasad Singh v. Baiju Mal	A W N (1906) 43 3 A L J 110 28 A 337	766
Garurduj Prasad Singh v. Meju Mal	Do	312
Gaulstam, J C v. Secretary of State	10 C W N 295	312
Guya Din Singh v. Thakur Lal Bahadur Singh	9 O C 204	64
Gayanoda Bala Dassee v. Butto Kristo Bai- ragoo	10 C W N 857 33 C 1040	306
Prasad v. Pandit Tekdhar	9 O C 204	279
Missir v. Raudhir Singh	3 A L J 456 A W N (1906), 206 28 A 681	130
Singh v. Raja Ram Singh	2 A L J 787 A W N (1905), 259 28 A 235	247
		751

Name of Case.	Volume and Page.	Column of Digest.
Genda Kuar v. Piari Lal ...	28 A 693 - A W N (1906), 175	182
—Kungur v. Piari Lal...	Do Do	182
Gendun Singh v. Inder Namin Singh	3 C L J 537	680
Gendra Kuar v. Piari Lal	A W N (1906), 175 = 28 A 693	182
Ghafuran v. Chhanga	A W N (1906), 64 = 3 A L J 841	818
Ghafur Hasan Khan v. Muhammad Kifayatul-lah Khan	A W N (1905), 165 = 2 A L J 413 = 28 A 19	916
Ghasi Ram v. Hargobind	A W N (1906), 66 = 3 A L J 244 = 28 A 411	371
—v. Mangal Chand	A W N (1905), 172 = 2 A L J 491 = 28 A 41	256
Ghazaffar Hussain Khan v. Yawar Hussain	2 A L J 591 = A W N (1905), 208 = 28 A 112	295
Ghela v. Haider	59 P R 1906	301
Ghodu Singh v. Khushal Singh	90 P R 1905	621
Ghulam Muhammad v. Allah Dad	5 P L R 1906	382
Giridhari Lal Roy v. Dharendra Krishna Mukerjee	11 C W N 1 = 4 C L J 495	700
—v. Paresb Nath Mukerjee	4 C L J 495 = 11 C W N 1	700
Girish Chander Lepiri v. Sasi Sekharswar Roy	33 C 329	535, 537
—Chandra Chandar v. Golam Karim	10 C W N 347 = 3 C L J 235 = 33 C 451	102, 548
—Changdar v. Golam Kaem	Do Do	102, 548
—Mukhopadhyaya v. Chattradhar Ghose	3 C L J 379	92
—Nandi v. Kedar Nath Kundu	10 C W N 592 = 33 C 590	679
Giriya Chettiar v. Sabapathy Mudaliar	29 M 65	807
Girjabai Barater (Changadhar v. Raghunath alias Talya	7 Bom L R 741 = 30 B 147	854
Girja Balkrishna Bhat Thakar v. Raghunath alias Talya Vishwanath	Do Do	854
Girja Dayal v. Debi Prasad	A W N (1906), 40 = 3 A L J 91	444
Girjashankar Narsiram v. Gopalji Gulabhai	7 Bom L R 951 = 30 B 241	120
Gohinda Bhatta v. Naraina Bhatta	16 M L J 285 = 29 M 424	899
—Lal Das v. Shiba Das Chatterjee	33 C 1823 = 3 C L J 545 = 10 C W N 986	577, 588
—Prasad Das v. Akhoy Kumar Dey	10 C W N 206	45
Gobind Sahai v. Sibdu Ram	33 C 878	902
Gokal Chand v. Pala Mal	24 P L R 1906	302
Gokul Das v. Debri Prasad	28 A 638 = 3 A L J 548 = A W N (1906) 162	705
Gokul Das v. The Eastern Mortgage and Agency Company	10 C W N 276 = 33 C 410 = 4 C L J 102	699
Gopala v. Ania	2 N L R 94	819
GopalChunder Bose v. Gouesh Chunder Srimani	4 C L J 112	52
—Das Agharwallah v. Budree Das Sureka	10 C W N 662 = 33 C 657	217
—Lal Seal v. F J Marsden	10 C W N 1102	252
—Sahai v. Jassa	99 P L R 1906	553
—Singh v. Sukha Singh	58 P R 1906	390
Gopi Nath Chattopadhyaya v. Sajani Kanta Singh	10 C W N 240	240
—Adhicary v. Gadadhar Das	33 C 1020	793
—v. Munno	A W N (1906), 257 = 3 A L J 637	420
—v. Massupmat Monno	3 A L J 637 = A W N (1906), 257	420
—Setti Narayanasawmi Naidu v. Raja Kavali Arunachella Row	1 M L T 318 = 16 M L J 563 = 29 M 519	898
Gopi Setti Narayanasawmi Naidu Garu v. Raja Kavali Arunachella Appa Row Bahadur, Zaminadar Garu	1 M L T 318 = 16 M L J 563 = 29 M 519	898
Gorakh Singh v. Sedhi Gopal	A W N (1906) 69 = 3 A L J 183 = 28 A 383	253
Gour Chandra Das v. Prasanna Kumar Chandra	3 C L J 363 = 10 C W N 788 = 33 C 812	162
Government and Nannu Kotharo and others, In the matter of	30 B 275 = 7 Bom L R 697	62
Govinda Chandra Pal v. Dwarka Nath Pal	33 C 666	446
Govindammal v. Gopala Chariar	16 M L J 524	889

TABLE OF CASES.

XXI

Name of Case.	Volume and Page.	Column of Digest.
Govinda Priya Chowdhurani v. Ratan Dhupi	4 C L J 37	87
Govindaswami Naidu v. Alagiriswami Naidu	29 M 104	324
Govind Rao Badkhas v. Collector of Nagpore	2 N L R 172	570
Great Indian Peninsular Railway Company v. Chandra Bai	A W N (1906) 101 - 3 A L J 329 - 28 A 552	56
Greenway E. C. F. v. The Municipal Board of Cawnpore	A W N (1906) 107 - 3 A L J 341 - 28 A 600	121
Grindra Chandra Pal Chowdhry v. Sreenanthu Pal Chowdhry	32 C 567 = 3 C L J 141	561
Guise J. v. Anantha Ram Rathi	10 C W N 193	233
Gujar Khan v. Amir Baz	4 P R 1905 (Rev) 58 P L R 1906	149
Mal v. Amin Chand	78 P L R 1906	609
Gulab Singh v. Jag Ram	3 A L J 646 = A W N (1906) 249	762
v. Mohar Singh	160 P L R 1906	789
Gulam Murtaza v. Bupa Mal	57 P R 1906 - 100 P L R 1906	300
Gulraji Kunwari v. Jagdeo Prasad	A W N (1906) 94 - 28 A 477	49
Gurdin Pandey v. Rai Gokul Chand Bahadur	9 O C 288	229
Guddita Mal v. Hari Singh	6 P L R 1906	142
Gurdit Singh v. Ganpet	3 P R 1905 (Rev) 54 P L R 1906	143
Gurditta v. Atar Singh	117 P R 1906	406
Gurmukh Singh v. Sohan Lal	167 P L R 1906	VII
Prasade v. Satgur Prasad	9 O C 107	313
Guru Deo Narayan Sinha v. Amrit Narayan Sinha	33 C 689	691
Guthal Chaudri v. Jogi Chaudhri	A W N (1906) 239 = 3 A L J 617	132
Habib Ulla v. Kushimba	3 A L J 481 = A W N (1906) 199	131
v. Musammat Kushimba	Do Do	131
Hafizaboo v. Mahamed Caseem Moorad	8 Bom L R 794	224
Haider v. Iswar Das	22 P R 1906 - 115 P L R 1906	754
Ali Khan v. Gangau	A W N (1906) 204	562
Haji v. Gohna	39 P L R 1006	157
Kasak Kasim Sett v. Nagendra Pai Krishna Pattar	21 T L R 73	900
Haji Saboo v. Ally Mohamed	30 B 270	558
Hamid Husain v. Bhola Nath	A W N (1906) 186	301, 308
Hamunt Narsinha v. Govind Pandurang Kumat	8 Bom L R 283	437
Haicman Pershad v. Muhammad Ishaq	2 A L J 615 = A W N (1905) 229 - 28 A 137	282, 464
Hanuman Das v. Ambica Parshad	3 A L J 659 = A W N (1906) 278	843
Hara Dhan Kalia v. Purna Chandra Mondal	11 C W N 145	245
Hardayalmal v. K C Sarkar	2 N L R 54	310
Hardeo Sahai v. Gauri Shankar	A W N (1905) 171 - 2 A L J 493 = 28 A 25	284
Hare Krishna Somanta v. Priya Nath Khamroi	10 C W N 345	444
Harendra Kumar Guha v. Dindayal Saha	4 C L J 195	903
Hargovind v. Kishan Koer	3 A L J 320 - A W N (1906) 113 - 28 A 607	792
v. Kishan Kunwar	Do Do	792
Hari Chand v. Bura Mal	27 P L R 1906	858
v. Mansa Ram, Goverdhan Chand	18 P L R 1906	469
Hari Charan v. C. Brook	155 P L R 1906	IX
Hari Ganu v. Sakharam Baji	8 Bom L R 310	580
Hari Govind Joshi v. Ramchandra Narayan	8 Bom L R 873	265
Harihar Ota v. Dasarathi Misra	9 C W N 636 - 1 C L J 498 - 33 C 527	607
v. Lokeshath Misra	Do Do	607
Khardu v. Dhondi Nath	8 Bom L R 96	740
Hari Lal Mallick in the matter of	10 C W N 884 = 33 C 1269	270
Mohan Singh v. Kali Prasad Chaliha	38 C 11	370
Raghunath v. Vithal Dhohdu	8 Bom L R 89	725
Harji Mal v. Pokhar Das	135 P R 1906	226
Harjas Rai v. Naurang	3 A L J 220 = A W N (1906) 82	923

Name of Case.	Volume and Page.	Column of Digest.
Harnam Singh v. Jiwan ...	7 P R 1906 56 P L R 1906	696
-----v. Jortab Singh ...	129 P L R 1906 102 P R 1906	402, 408
Harnandan Rai v. Nakehhedi Rai ...	3 A L J 391 A W N (1906) 302	123
Masim Ali v. Abdul Rahmon ...	3 A L J 467 A W N (1906) 487	308
Hayes v. Bidyanund Thakur ...	28 A 698	797
-----G S v. Ghina Barhi ...	3 C L J 373	562
-----v. Rudranund Thakur ...	33 C 450	796
Helan Dasi v. Durga Das Mundal ...	33 C 381	426, 457, 484
Hem Ban v. Bihari Gir ...	1 C L J 323	920
-----A W N (1905) 189 - 2 A L J 479	28 A 58	
Herumboo Nath Banerjee v. Satish Chandra Mukherjee ...	33 C 1175	685
Het Ram v. Bahadur ...	37 P R 1906 165 P L R 1906	393
Himayat Ali v. Jowala Sarup ...	100 P R 1905 16 P L R 1906	415
Hiralal v. Bengal-Nagpur Railway Company ...	2 N L R 125	56
Hira Hal Bose v. Dwija Charan Bose ...	3 C L J 240 - 10 C W N 269	633, 811
Hla Gyaw v. Sit Yon ...	3 L B R 181	314
-----Nyo v. San Pyu and Sanpru ...	3 L B R 190	708
Holloway F H v. Guneswar Singh ...	3 C L J 182	610
Hon'ble Raja Ali Mohammad Khan, The v. The Deputy Commissioner of Bara Banki ...	9 O C 259 (B)	894
Hon'ble Raja Tasaddiq Rasul Khan v. Jauki Saran ...	9 O C 211	135
-----Ali Mohammad Khan, The v. Ram Bilas ...	9 O C 271 (B)	136
Hriday Nath Poddar v. Joyram Mahito ...	4 C L J 402	434, 853
Hub Lal v. Ram Charan ...	A W N (1906) 141	561
Huddar v. Musammam Shahzada Khanam ...	9 O C 243 (B)	210
Hukam Chand Baid v. Kamalanand Singh ...	3 C L J 67 33 C 927	900
Hulas Rai v. Ram Prasad ...	3 A L J 215 - A W N (1906) 82 - 28 A 454	749
Humera Bibi v. Najmuennissa Bibi ...	A W N (1905) 222 2 A L J 778 - 28 A 147	645
Hurruck Chand v. Gobind Lal Khetry ...	10 C W N 1053	961
Hussan Kuli Khand v. Nakehhedi Nonia ...	33 C 200	85
Iahi Buksh v. Miran Buksh ...	68 P R 1906 - 123 P L R 1906	397
Imam Ali v. Baj Nath Ram Sahu ...	10 C W N 551 3 C L J 576 33 C 613	181, 592, 597
-----Baksh v. Puran Mal ...	31 P R 1906 - 133 P L R 1906	697, 787
-----Din v. Hasan Bibi ...	85 P R 1906 148 P L R 1906	33
Indar v. Choki Ram ...	2 P L R 1906	648
Inu Khan v. Namuddin Sircar ...	3 C L J 377	382
Inventions and Designs Acts of 1883, <i>In re</i> and Alexander Grey ...	10 C W N 985	898
Isaac Shragar, <i>in the matter of</i> ...	83 C 1062	48
Ishri Parshad v. Baijnath ...	83 C 1062	532
Ismailji Ibrahimji Nagree v. N. C. Macleod ...	A W N (1906) 195 - 3 A L J 743	791
Iswar Lal Singh v. Jagoo Sahu ...	8 Bom L R 969	914
Iswar Prasad v. Jagannath ...	10 C W N 284 - 33 C 378	173
Jadu Nath Poddar v. Rup Lal Poddar ...	A W N (1906) 194	364
Jafar Khan v. Muhamamad Khan ...	10 C W N 650 4 C L J 22 - 33 C 967	185
Jaffar Meher Ali v. The Budge Budge Mills Co., Ltd. ...	29 P L R 1906	385
Jagadram Sahai v. Mahabir Prasad ...	10 C W N 755 - 33 C 703	344, 879
Jagadhar Narain Prasad v. A. M. Brown ...	A W N (1905) 190 - 2 A L J 482	750
Jagadis Chandra Deo Dhabal v. Satrugnan Deo Dhabal ...	28 A 60	683
Jagan Nath v. Budhwa ...	10 C W N 1010 - 4 C L J 121 - 33 C 1133	76
-----v. Chhampa ...	4 C L J 238 - 33 C 1065	921
-----A 307 ...	187 P L R 1906	482
-----A W N (1906) 13 - 3 A L J 87 - 28 A 307 ...		

TABLE OF CASES

xxiii

Name of Case.	Volume and Page.	Column of Digest.
Jagannath v. Chet Ram	3 A L J 318 = A W N (1906), 28 A 470	852
— v. Milap Chand	3 A L J 504 = A W N (1906), 219 = 28 A 722	242
Jaganath Prasad v. Tore	3 A L J 610 = A W N (1906), 253	224
— Singh v. Lular Kunwar	A W N (1906), 308	765
Jagatdhar Narayan Singh v. A. M. Brown	4 C L J 121 = 10 C W N 1010 = 33 C 1133	683
Jagdam Sahai v. Mahabir Prasad	2 A L J 482 = A W N (1905) 190 = 28 A 60	750
Jaggun Nath v. Seth Milap Chand	A W N (1906), 219 = 3 A L J 504 = 28 A 722	242
Jaggadwar Dutt v. Bhuban Mohan Mitra	33 C 425 = 3 C L J 205	223, 677, 905,
Jaggi Lal v. Gopi Narain	A W N (1906) 57 = 3 A L J 136	99
Jahur Ali v. Sher Ali	A W N (1906) 5 = 3 A L J 20 = 28 A 233	129
Jai Bhagwan v. Buali Baksh	63 P R 1906 = 121 P L R 1906	266
— Dat v. Ram Badal	A W N (1905), 227 = 28 A 168	750
— Kishan Singh v. Moti Chand	3 A L J 627 = A W N (1906), 258	157
— Kumar v. Babu Gauri Nath	A W N (1906), 212 = 3 A L J 506 = 28 A 718	477
Jai Kumar v. Gauri Nath	Do	477
Jaimat Lal v. Khair Muhammad	126 P R 1906	146
Jai Narain v. Mahbub Bakhsb	3 A L J 203 = A W N (1906), 77 = 28 A 428	38
Jairam Nathoo v. Nathoo Shamji	8 Bom L R 632	499
Jagan Nath v. The Allahabad Bank Ltd., Lucknow	9 O C 174 (B)	39
Jajneswar Dutt v. Bhuban Mohun Mitra	3 C L J 205 = 33 C 425	223, 677, 905
Jala Sutram Lakshminarayan v. Bomma Devara Venkata Narasimha Naidu	16 M L J 35 = 29 M 42	208
Jamini Nath Roy v. Debi Prasad Agarwala	33 C 857 = 4 C L J 192	307
Jamini Nath Roy v. Dharma Das Sir	Do	307
Jamuna Das v. Najm-ul-Nissa	3 A L J 228 = A W N (1906), 88	608
— v. Najm-un-nissa Bibi	Do	608
Jangi Singh v. Durga Singh	9 O C 164	274
Janki v. Mt. Jai Dai	9 O C 147 (B)	619
— v. Ram Partab Singh	28 A 286 = 2 A L J 833 = A W N (1906), 2	751, 764
— Nath v. Raja Ram Partab Singh	2 A L J 833 = A W N (1906) 2 = 28 A 286	751, 764
— Prasad Gauari Sahai	A W N (1905), 183 = 2 A L J 709 = 28 A 75	277
Janokey Nath Guha v. Brojo Lal Guha	* 33 C 757 = 3 C L J 450 = 10 C W N 600 (F.B.)	291
— Roy v. Brojo Lal Guha Roy	Do	291
Jathavedan Nambudri v. Kunju Achan	16 M L J 433	268
Jawad Ali v. Jananda Sundari Dutt	3 C L J 387	799
Jawahir Singh v. Yaqub Shah	59 P L R 1906	394
Jeeyangar v. Lakshmi Doss	1 M L T 233 = 16 M L J 393	447
Jhama v. Deobux	2 N L R 10	496
Jkonju v. Ram Dial	92 P L R 1906	403
Jivan Sahai v. Kalvan Mal	A W N (1906), 220	735
Jiwai Lal v. Kallu Mal	A W N (1905) 235 = 28 A 170	468
Jiwan Lal v. Kallu Mal	A W N (1905), 235 = 28 A 170	468
Jogendra Chandra Roy v. Rama Nath Bhattacharya	4 C L J 533	909
Jogeshwar Narain Singh v. Rai Radha Raywan	3 C L J 165	53, 785
— Sarina v. Dinaram Sarma	3 C L J 140	850
Jonab Sheikh v. Maharaja Surya Kunt Acharyya	10 C W N 1081 = 33 C 821	859
Surya Kanta Acharyya Chowdhry	33 C 821 = 10 C W N 1081	859

* In Col. 291, this is wrongly printed as 33 C, 756

Name of Case.	Volume and Page.	Column of Digest.
Joti Kuruvetappa v. Sri Devendra Kirti Buttara-kappatrachuria ...	16 M L J 854 ...	276
Jotindra Mohan Tagore v. Durga Dabe ...	10 C W N 438 ...	97
Jowahir Singh v. Yaqub Shah ...	5 P R 1906 ...	383
Joy Gobind Saha v. Monmotha Nath Banerjee ...	88 C 580 ...	82, 273
Jugal Kishore v. Mul Chand ...	8 A L J 802 = A W N (1906), 314 ...	127, 847
—Sahu v. Harbans Chaudhri ...	A W N (1906), 208 = 3 A L J 791 ...	715
Juggernath Augurwallah v. E. A. Smith ...	38 C 547 ...	355
Jugul Kishore v. Fakhr-ud-din ...	3 A L J 680 = A W N (1906), 286 ...	593
Jwala Singh v. Sahab Din Singh ...	9 C C 109 ...	562
Kachayi Kuttiali Haji v. Udumputhala Kunhi Putha ...	29 M 58 = 16 M L J 14 ...	282
Kailash Chandra Kundu v. Kunja Behari Goswami ...	4 C L J 86 ...	308
—Mandal v. Ram Narain Giri ...	4 C L J 211 ...	446, 818
Kaji Inus Kaji Bapu v. Kaji Inus Kajiba ...	8 Bom L R 576 ...	920
Kaka v. Labh Chand ...	106 P R 1906 = 162 P L R 1906 ...	404, 623
Kakarla Abbayya v. Raja Venkata Pappayya Rao ...	29 M 24 = 16 M L J 8 ...	509
Kaleshar Rai v. Nabiban Bibi ...	A W N (1906), 164 = 3 A L J 426* ...	754
—= 28 A 642 ...	3 A L J 234 = A W N (1906), 87 ...	246
Kalian Singh v. Thakur Das ...	A W N (1905), 180 = 28 A 51 ...	240
Kali Charan v. Jewat Dube ...	4 C L J 564 ...	92
—Ash v. Purvathi Charan Ash ...	4 C L J 553 ...	99
—Bowmik v. Harendra Lal Roy ...	1 P R 1905 (Rev) = 53 P L R 1906 ...	148
Kali Das v. Brahman ...	8 Bom L R 839 ...	865
—Lalbhai v. Tribhuwandas Bhagwandas ...	10 C W N 272 ...	81
Kali Sundari Debes Chaudhuri v. Dharani Kanta Lahara Chaudhuri ...	9 O C 156 ...	57
Kalka Prasad v. Bankey Lal ...	A W N (1905) 225 = 28 A 155 ...	898
Kallam Khan v. Mardan Khan ...	88 C 998 ...	672
Kallar Roy v. Ganga Pershad Singh ...	13 P R 1906 ...	286
Kalu v. Khair Din ...	64 P R 1906 ...	151, 693
—v. Mona Mal ...	29 M 177 ...	883
Kameswaramma v. Sitaramanuja Charlu ...	21 T L R 256 ...	196, 199
Kanakku Yelayudan Padmanabhan v. Mathevan Kali ...	20 M 515 ...	822
Kandiyl Chirya Chandu v. The Zamorin of Calicut ...	16 M L J 557 ...	560
Kandregula Suryanarayana Row v. Somayya ...	A W N (1905), 265 = 28 A 240 ...	317
Kanhaiya Lal v. Baldeo Prasad ...	16 M L J 462 = 1 M L T 426 ...	376
Kanbiyur Manakkal Murthi Kandhan Nambudirippad v. Thirunilai Gramam Anantharama Patter ...	15 M L J 491 = 29 M 124 ...	549
Kannam Nambiyar v. Anantam Nambiyar ...	23 P L R 1906 ...	678
Kanahi Ram v. Badda ...	40 P R 1906 ...	783
—v. Tota Ram ...	21 T L R 179 ...	668
Kanuku Aunda Perumal Pillai Aiyun Perumal Pillai v. Kanuku Bhoothalingomm Pillai ...	21 T L R 24 ...	665, 667
Kanuku Raman Aiyappan v. Kanuku Sankaran Easwaran ...	75 P R 1906 ...	398
Kanwar Singh v. Sampuran Singh ...	87 P R 1905 = 43 P L R 1906 ...	75
Karam Shah v. Tara Shah ...	A W N (1905), 217 = 2 A L J 619 = 28 A 127 ...	648
Karim v. Priyo Lal Bose ...	74 P R 1906 = 137 P L R 1906 ...	700
—Baksh v. Jehandad Khan ...	30 P L R 1906 ...	614
Karm Dad v. Nathu ...	7 Bom. L R 965 = 30 B 929 ...	589
Karsondas Dharatnsey v. Bai Gungabai v. Gungabai ...	Do ...	589
Kartar Singh v. Faqir Singh ...	35 P L R 1906 ...	366
Kasakuri and Vaka-Nara Reddy v. Pooloori Sreeramulu ...	1 M L T 101 ...	5

* In Col. 754, this is wrongly printed as 3 A L J 246.

TABLE OF CASES.

xxv

Name of Case.	Volume and Page..	Column of Digest.
Kashi Bai v. Ram Kishan Shastari...	A W N (1906), 223	592
*Kashim Sheikh v. Prosunno Kumar Mukerjee...	10 C W N 598=33 C 596	75
Kashinath Chimmaje v. Chimmnaje Sadashiv ...	8 Bom. L R 268=30 B 477	496
—Shamji v. Chimmnaji Sadashiv	8 Bom. L R 268=30 B 477	496
Kashi Ram v. Sardar Singh ...	A W N (1905), 226=28 A 157	694
Kasim v. Hasham ...	39 P R 1906=98 P L R 1906	392
Kauka v. Labh Chand ...	106 P R 1906=162 P L R 1906	404, 628
Kaulesra v. Jorai Kasaundan ...	A W N (1905) 205=2 A L J 663=28 A 233	13
Kawnsilla Kunwar v. Gopal Prasad...	A W N (1906), 73=3 A L J 191=28 A 424	600
Kazi Aminullah v. Hajira ...	A W N (1906) 222=3 A L J 767	129
Kazimuddi Patari v. Fauzdar Khan ...	10 C W N 880=4 C L J 811	269
Kesaram Narasimhulu v. Vuddanda Rao Narasimhulu	1 M L T 102=16 M L J 333	118
—v. Vuddanda Row Narasimhulu Patnaidu	1 M L T 381 (F.B.)=16 M L J 514	117
Kesavaloo Naidu v. Murugappa Mudali	16 M L J 587	III
Kesavan Govindan v. Renga Aiyar Venkatachalam Aiyar	21 T L R 206	321
Komavar Appu Ramakrishna Reddi v. Katta Kota Roddi	1 M L T 311 (F.B.)=16 M L J 458	376
Keshvaram Dutt v. Ranchhod Fakira	7 Bom. L R 811=30 B 156	221, 713
Keshav Rao Bhagwant v. Rai Pandu	8 Bom L R 287	436
Kewal v. Tirkha ...	A W N (1906), 27=3 A L J 8=1 M L T 59	628
—Lodhi v. Brij Nath ...	2 N L R 81	286
Khair-ul-Nisa v. Bahadur Ali	27 P R 1906=11 P L R 1906	782, 787
Khaja Kutbuddin v. Khaja Faizuddin	2 N L R 72	9
Khan Bahadur Ahmad Shah v. Walidad Khan	83 P L R 1906=98 P R 1906	761
—Singh v. Hakim Singh	15 P L R 1906=97 P R 1905	151
—Mulk v. Pir Baksh	152 P L R 1906	161
Kharsetji Jiwanji v. Minalal Shadiram	8 Bom L R 296=30 B 395	814
Khasay v. Jugla ...	A W N (1906), 79=28 A 432	131
Khasan Singh v. Roli	85 P R 1906	393
Khiali Ram v. Raghunath Prasad ...	3 A L J 621=A W N (1906), 214	881
Khirodamoyi Barmani v. Bagala Sundari Barmani	4 C L J 492	211
Khetra Pal Singh Roy v. Kritartha Moyi Dasi...	10 C W N 547 (F.B.)=3 C L J 470=33 C 566	89
Khuda Yar v. Fetteh ...	8 P R 1906=66 P L R 1906	384
Khuddo v. Durga Prasad ...	3 A L J 729=A W N (1906), 290	13
Khurshaid Ali v. Rashid Hussain	9 O C 331	767
Khushal Singh v. Khawani Lal	3 A L J 665=A W N (1906), 282	351
Kikkara Appadu v. Datto Kamayya	16 M L J 474	203
Kirpa Ram v. Baru Mai	A W N (1906) 95=3 A L J 326	866
Kisshwar Nath Sahai Dev v. Kali Sankar Sahai.	10 C W N 843	155
Kisan Kunbi v. Raghunath Kalar	2 N L R 101	874
Kishan Kunwar v. Fateh Chand	A W N (1906) 307	564
Kishan Lal v. Ishri	A W N (1905) 200=28 A 237	750
Kishori Raman Kapuria v. Ananta Ram Laha...	10 C W N 270	82
Kissen Gopal Sadaney v. Kally Prosonno Sett...	33 C 633	858
Kodubakhsh v. Bishnu	2 N L R 27	878
Kola Venkatanarayana v. Vuppall Ratnam	29 M 531	895
Komah Prasad v. Savitri Bibi	A W N (1905) 181=2 A L J 579=28 A 54	604
Kooni Mphamadan Meera Sahib Tharagan v. M Mamadu Meera Sahib Tharagan	10 M L T 471=1 M L T 423	205
Korath Annan Kutti v. Perungottai Appu Nambiar	29 M 822	639
Kounshilla Kuar v. Gopal Prasad...	A W N (1906) 73=3 A L J 191=28 A 424	600
Koyyana Chittamma v. Doosy Gavaramma	16 M L J 136=29 M 225	255
Kripamoyee Dassi v. Mohim Chandra Dutt	10 C W N 232	81

Name of Case.	Volume and Page.	Column of Digest.
Kripa Nath Chakrabutty v. Sheikh Ann	10 C W N 944 4 C L J 382	98
—Chakravarti v. Seikh Ann	4 C L J 382 = 10 C W N 944	98
—Rao v. Gulab Din	7 P L R 1906	384
Krishna Ayyangar v. Venkatarama Ayyangar	29 M 115	511
—Ayyar v. Muthukumarasawmiya Pillai	29 M 217	908
—Bai v. Hary Govind Kulkarni	8 Bom L R 813 1 M L T 370	276
—(F. B.)		279
—Janardan v. Manohar Sundarrao	8 Bom L R 671 = 30 B 593	686
—v. Rama Bala	8 Bom L R 764	279*
—kom Janardan Sundar Thakur v. Manohar Sundarrao	30 B 593 8 Bom L R 671	508
—Martand v. Shripati Pandu	8 Bom L R 12 = 30 B 333	74
—Chandra Dutta Chowdhury v. Khiran Bajania	10 C W N 499 3 C L J 222	74
—Chundra Dutt Chowdhuri v. Miran Bajania	3 C L J 222 = 10 C W N 499	204
—Chandra Pal v. Protap Chandra Pal	3 C L J 276	508
Krishnai kom Martand v. Shripati bin Pandu	8 Bom L R 12 = 30 B 333	268
Krishnaji Bapaji v. Kashibai	7 Bom L R 667 = 30 B 115	446, 503
Krishna Kisser Chakravarti v. Sukha Sindhu Sanyal	10 C W N 1000	110
Krishnamachari v. Rangachariar	16 M L J 489 = 1 M L T 331	116
—v. Thirumala Kumara Rangachariar	1 M L T 331 16 M L J 489	160
Krishan Chandra v. Saidan Bibi	2 A L J 821 = 28 A 256 = A W N (1905) 271	243
Krishnan v. Venkatapathi Chetti	29 M 318	665
—Aiyappan v. Padmanaban Raman	21 T L R 239	842
—Embrandri v. Marakkar	1 M L T 432	322
—Krishnan v. Aiyappan Kochu Kanan	21 T L R 191	838, 875, 858
—Namburi v. The Diwan of Travancore	21 T L R 211	202
—Ramen v. Ramen Aiyappan	21 T L R 52	18
Krishnaswami Ayyengar v. Sivaswami Udayar	29 M 166 = 15 M L J 449	18
—N v. Sivaswami Udayar	15 M L J 449 = 29 M 166	716
Krishner v. Arappuli Iyer	16 M L J 28	258
Kristnani Sooraya v. Pathma Bee	29 M 151	353
Kriti Chunder Chatterjee v. J J Atkinson	10 C W N 640	83
Kuldip Singh v. Chatur Singh Roy	3 C L J 285	651
Kulsom Bibee v. Golam Hossein Cassim Asiff	10 C W N 449	V
Kumaratla Servaigaran alias Chinnasami v. P L. S. A. R. Salupathy Chettiar	16 M L J 545	22
Kumar Chandra Kishore Roy v. Prosanna Kumar Dass	10 C W N 864 = 4 C L J 523	367
—Saradindu Roy v. Bhagabathi Debya Chowdhurani	10 C W N 835	421
Kundan v. Bidhi Chand	3 A L J 670 = A W N (1906), 283	239
Kunhanmad v. Amad	16 M L J 27	282
Kunhi Kuttiali Haji v. Kunhi Patha	29 M 58 = 16 M L J 14	701
Kunj Behari v. Baldeo Rai	3 A L J 531 = A W N (1906), 246	229
Kunja Behari Ghose v. Durgamoni Dassi	3 C L J 160	54
—Mal v. Gauri Shankar	A W N (1905), 274 = 1 M L T 52 = 3 A L J 30	635, 665
Kunjan Narayanan v. Kunja Velayudhan	21 T L R 183	587
Kura Mal v. Ram Nath	A W N (1906), 67 = 3 A L J 218 = 28 A 414	146
Kuria v. Nanak	7 P R 1905 (Rev) = 68 P L R 1906	890
Kurri Veerareddi v. Kurri Bapireddi	1 M L T 153 (F. B.) = 29 M 396 = 16 M L J 395	408
Labh Sing v. Narain Singh	142 P L R 1906	35
Lachman Das v. Chaturbhuj Das	A W N (1906), 16 = 3 A L J 49 = 28 A 252	406
—v. Kashi Ram	140 P R 1906	630
—v. Narain Das	A W N (1906), 269 = 3 A L J 815	128
Lachmi Narain v. Narotam Das	3 A L J 623 = A W N (1906), 251	

Name of Case.	Volume and Page.	Column of Digest.
Iachmi Dai Mahatwani v. Kissen Lal Pahari ...	4 C L J 537 = 11 C W N 147	155
Iachimi Narain v. Narotam Das ...	3 A L J 688 = A W N (1906), 272	128
----- v. Vernon ...	137 P R 1906	565
Iachu v. Kishen Lal ...	44 P R 1906	250
Lahori v. Radho ...	72 P R 1906	397
Lakhraj Bharathi v. Anrush Tiwari ...	4 W N (1906), 80 = 28 A 434	748
Lakshman Sadashiv v. Gopal Appaji ...	8 Bom L R 367 = 30 B 506	248
----- Shet Rediz v. Gopal Annaji Kargupikar ...	30 B 506 = 8 Bom L R 367	248
Lakshmi Nachiar v. Ramachandra Dorai ...	16 M L J 5	426, 715
Lakshminarayana v. Zemindar of Vallur ...	16 M L J 35 = 29 M 42	208
Lalshufi Ammal v. Seerangathammal ...	29 M 310	15
Lala Bhugwant Sahay v. Rai Pashupathi Bose ...	10 C W N 561 = 3 C L J 257	311
Nath Lalbhai Mulchand v. Mansukh Raichand ...	8 Bom L R 482	522
Lalit Mohan Mandal v. Satish Chandra Das ...	4 C L J 234 = 3 C 1163	272
Lallu Sah v. Gaya Pershad ...	9 O C 96 (B.)	703
Lalman v. Mohar Singh ...	3 A L J 848	911
Lal Singh v. Pulandar Singh ...	2 A L J 647 = A W N (1905), 248 = 28 A 182	480
Land Acquisition Act, <i>in re</i> ...	7 Bom L R 697 = 30 B 275	62
----- <i>in the matter of</i> I of 1894, The ...	7 Bom L R 881 = 30 B 341	63
Langtu Pande v. Baijnath Suran Pande ...	A W N (1906), 54 = 3 A L J 13 28 A 387	629
Latchman Rao v. Ganapat Rao ...	2 N L R 49	861
Lehna Singh v. Hira Singh ...	134 P R 1906	855
Liakat Husain v. Rashid-ud-Din ...	3 A L J 794 = A W N (1906), 313	765
Lokenath Misra v. Dasarathi Tewari ...	2 C L J 590 = 32 C 1072 = 10 C W N 505	204
Loknath v. Amir Singh ...	A W N (1905), 197 = 2 A L J 602 = 28 A 81	285
Lu Bein v. Po Sein ...	3 L B R 203 (F.B.)	231
Macdonald, C R. v. Babbu Lal Purbi ...	P C L J 519	94
Macleod, N C v. H B M's Consul General Zanzibar ...	8 Bom L R 725	774
Madan Lal v. Mohamed Alinasir Khan ...	3 A L J 476 = A W N (1906) 182 = 28 A 696	123
----- v. Saiyid Muhammad Ali Nasir ...	Do	123
----- Mohan Das v. Nobin Keshore Deb ...	3 C L J 291	627
----- Lal v. Akbaryar Khan ...	A W N (1905), 270 = 2 A L J 813 = 28 A 241	504
----- Mondal v. Bikanta Nath Mondal ...	10 C W N 839	211
Madar Mandal v. Mahima Chandra Mazumdar ...	3 C L J 343 = 33 C 531	91
Madanlami Asari v. Pechi Asari <i>alias</i> Pechi Mu- thu Asari ...	1 M L T 106	45
Madathil Raman v. Krishnan Nair ...	16 M L J 48 = 29 M 153 (F.B.)	210
Madhavji Bhanji v. Ramanath Dadoba ...	8 Bom L R 354 = 30 B 457	862
Madho Ram Singh v. Surjan Kunwar ...	A W N (1905) 282 = 3 A L J 16 = 28 A 281	621
----- Singh v. Surjan Kunwar ...	A W N (1905) 282 = 3 A L J 16 = 28 A 281	621
Mafuzzul Hosain v. Basid Sheikh ...	4 C L J 485 = 11 C W N 71	641
Magania v. Prom Singh ...	8 Bom L R 856	24
Ma Gyi v. The Secretary of State for India in Council ...	3 L B R 117	60
Mahabir Singh v. Rana Sheoraj Singh ...	9 O C 373	619
Mahadaji v. Pairia ...	2 N L R 63	705
Mahadeo Singh v. Mussammat Deo Koer ...	9 O C 58	515
Mahamad Pulavar v. Parameswara Patter ...	15 M L J 418	347
----- Ravuthar v. The British India Steam Navigation Company Limited ...	16 M L J 573 = 1 M L T 387	197
Mahamahopadhyaya Runga Chariar v. The Municipal Council of Kumbakonam ...	1 M L T 333 = 16 M L J 582 = 29 M 539	115
Mahant Har Charan Das v. Thakur Prithiraj Singh ...	9 O C 63 A (B)	139

Name of Case.	Volume and Page.	Column of Digest.
Maharaj Singh v. Balwant Singh ...	28 A 508 = A W N (1906) 117 = 3 A L J 274 ...	615
— v. Raja Balwant Singh ...	3 A L J 274 = A W N (1906) 117 = 28 A 508 ...	487, 476, 615, 676,
Maharaja of Benares v. Har Narain Singh	A W N (1905) 167 = 2 A L J 585 = 28 A 25	746
—, The v. Patanj Kunwar	A W N (1905) 277 = 28 A 262	445
Maharani of Dumraon v. Buddha Kunwari	A W N (1905) 213 = 2 A L J 661 = 28 A 181 ...	121
Mahesh Datt Pandey v. Babu Dan Bahadur Pal	A W N (1906) 179	698
— v. Tulsee Ram ...	A W N (1906) 178	698
Mahomed Ahson Ali Khan v. Umaradaraz Ali Khan	3 A L J 387 = A W N (1906) 146 = 28 A 638 ...	653
— Altaf Hussain v. Mir	A W N (1906) 179	563
Mahomedbhair Nensey v. Fatmahai	8 Bom L R 615	942
— Sharief v. Chaittu	2 N L R 42	356
— Taki Reza v. W A Thomas	4 C L J 817	903
Maina v. Bachchi	28 A 655 = 3 A L J 551 = A W N (1906) 165	882
Makhan Singh v. Dula	4 P R 1906 = 55 P L R 1906	381
Makhan Singh v. Ishar Singh	186 P R 1906	732
Makhdum Baksh v. Ali Husain Khan	3 A L J 807 = A W N (1906) 149	752
— Khan v. Musammat Jodi	9 O C 91 (B)	919
Makhi Keyi v. Keloth Mammod	16 M L J 275	659
Makrand v. Ram Charan	9 O C 281	449, 633,
Malik Nur v. Keshan	105 P R 1906 = 86 P L R 1906	403
— v. Musammat Aishan	Do Do	403
Mali Muhammad v. Mariam Bi	52 P R 1906 = 102 P L R 1906	727
Malji Kashi v. Ambi China	8 Bom L R 584	227
Malladi Venkatappayya v. Jonnalagadda Venkatasubbayya	16 M L J 352	493
Malubhai Ludhabhai v. Sursangji Jalamsangji	7 Bom L R 821 = 30 B 220	379, 806
Maman v. Kartar Baksh	128 P L R 1906	407
Mamidi Subbayya v. Mamidi Koudayya	16 M L J 185	671
Mammikkutti v. Puzhakkal Edom	29 M 353	614
Mamon v. Ghaunsa	99 P R 1906 = 180 P L R 1906	401
Mancherj v. Thakordas	8 Bom L R 963	106
Mandakini Debi v. Arunbala Debi	9 C L J 515	521
Manokji, Cawasjee in re...	8 Bom L R 85 = 1 M L T 50	531
Mangat Ram v. Devi Chand	20 P R 1906 = 69 P L R 1906	482
Manian Pattar v. Madras Railway Company	16 M L J 37 = 29 M 118	339
Manickam Pillai v. Ramalinga Pillai	29 M 120	881
Manikka Vasaka Dasikar v. Balagopalakrishna Chetty	16 M L J 415 = 29 M 553	808
— alias Gnanu Sambanda		
Pandara Sannadhi v. Balagopalakrishna Chetty	Do Do	XL
Manik Lal Seal v. Basmali Mukerjee	32 C 1104 = 10 C W N 193 = 3 C L J 27	253
Manikyanala Bose v. Nanga Kumar Bose	4 C L J 357 = 11 C W N 12 = 83 C 1806	20, 472
Manjappa Roi v. Krishnayya	29 M 118	833
Manjappa v. Venkatesh	8 Bom L R 988	565
Mankanna Kunwar v. Balkishan Das	A W N (1905), 170 = 28 A 33	331
Manna Lal v. Samandu	46 P R 1906 = 94 P L R 1906	372
Manoji Singh v. Sarat Lal Minto	4 C L J 334	859
Mariamnessa Bibee v. Joynab Bibee	10 C W N 934 = 4 C L J 149 = 33 C 1101	818
Mariyumma v. Rev. Boshard	1 M L T 345	671
Martand Trimbak v. Vinayak Kashinath	8 Bom L R 832	448
Matangini Debya v. Prasannamoyee Debya	8 C L J 93	798
Mata Parshad v. Nurendra Bahadur Singh	9 O C 350	615

TABLE OF CASES.

xxix

Name of Case.	Volume and Page.	Column of Digest.
Matara Gupta v. Uma Charan Sen...	8 C L J 52	618
Mathevan Kauli v. Sankaran Kunohiyan	21 T L R 127	828
Mathewson v. Shyam Sundar Sinha	88 C 786	878
Mathooni Thommen v. Raman Narayanan	21 T L R 1	969
Mathura Das v. Judubir Thapa	A W N (1906) 4 = 3 A L J 198 = 28 A 277.	786
—Damodardas w. Vandrawandas		
Soonderji	8 Bom L R 328	591
Mathura Mandal v. Ganga Charan Gope	88 C 1219 = 10 C W N 1033	564
Parshad v. Kalka Prashad	9 O C 289	484
Mathur Mundal v. Ganga Charan Gope Ghose	10 C W N 10 88 = 33 C 1219	564
Maula v. Khushia	166 P L R 1906	849
Baksh v. Muhammad Baksh	54 P R 1905	391
Maung Bwa v. Ma Thi	3 L B R 192	31
Gyi v. Lu Pe	3 L B R 120	698
Meik v. K A Meyappa Chetti	3 L B R 191	218
Maya Das v. Jowala Sahai	9 P R 1905 (Rev) - 65 P L R 1906.	148
May Myit v. Shwe Tha	3 L B R 164	216
Mazhar Hussain v. Bihari Singh	3 A L J 567 - A W N (1906) 234	740
28 A 760		14
Mazharuddin Khan v. Serajuddin Khan	4 C L J 115	205
Meera Sahib v. Meera Sahib	16 M L J 471 = 1 M L T 423	536
Megraj Marwari v. Narsing Mohan Thakur	33 C 846	625
Mehari Bibi w. Yakub Ali	11 C W N 156	829
Mehar Singh v. Gurbachana	146 P L R 1906	756
Mehi Lal v. Chet Ram	3 A L J 479	849
Mehr Singh v. Chola Ram	127 P R 1906	769
Mehta Chandras v. Malik Itbar Khan	154 P L R 1906	218
Meyappa Chetty v. Perianann Chetty	16 M L J 89 = 29 M 50	354
Misjan Patari v. Abdul Jubbar	10 C W N 1020	165
Mian Feroz-ud-din v. Sheikh Ghulam Rasul	76 P L R 1906	440
Mi Kin Kin v. Nga La	U B R (1905) Evidence 7	293
—E. Mya v. Na Pe	U B R (1905) Civil Procedure 40	188
—Kin Lat v. Nga Ba So	U B R (1905) Buddhist Law-Divorce 3	571
—Ma Gyi v. Nga Shwe Zin	U B R (1905) Land and Revenue Regulation 1	189
—Min Din v. Mi Hle	U B R (1905) Buddhist Law, Interitance, 11.	980
Mi Min Dwe v. Ma Ma Kin Kiniyin Mibaya	U B R (1906) Land and Revenue Regulation 1	
Minakshinath Pillai Sankarapandia Pillai		
v. Kuncha Ummal Kathija Ummal	21 T L R 228	641
Minalal Shadiram v. Kharsetji Jiwanji	8 Bom L R 296 = 30 B 395	814
Mirbaz v. Makhana	153 P L R 1906	VI
Mir Mansab Ali v. Muhammad Akbar	26 P L R 1906	420
—Muhammad Jan v. Sadanand Pande	A W N (1906) 30 = 3 A L J 43 = 28 A 394	120
—Sarwarjan v. Fakharuddin Mahomed	4 C L J 491 = 11 C W N 34 = 1 M L T 800	340
Chowdhury		212
—Ihtisham Haider v. Mir Bagar Ali	9 O C 285	
Mirza Mohamed Abbas Ali Khan Bahadur v. A. Quieros	9 O C 86 (B.)	186
Misa U v. Nga Pyan	U B R (1905) Evidence 3	492
Misri Lal v. Banarsi Das	3 A L J 283 = A W N (1906), 111	237
v. Banarsi Lal	Do	237
Misri Lal v. Mithu Lal	A W N (1906) 168 = 28 A 28	913
Mit Sing v. Muhammad	36 P L R 1906	562
Mohabbat Bahadur Lal v. Uda Kunwar	A W N (1906) 97 = 3 A L J 324	180
Mohammad Ashan v. Umardaras	3 A L J 387 = A W N (1906) 146 = 28 A 638	658
—Hasan v. The Deputy Commissioner, Baraich	9 O C 362	566
Mohan Lal v. Lachman Das Kunj Behari Lal	9 O C 221	596

Name of Case.	Volume and Page.	Column of Digest.
Mohan Lal v. Nand Kishore ...	A W N (1905), 280-2 A L J 839 (F. B.) 28 A 270	373
Mohant Gobind Ramanuja Dasa v. Lakhun Parida ...	11 C W N 112	71, 314
Mohomed Akbar Khan v. R. B. Kasturehand Daga ...	2 N L R 179	722
Moment v. The Secretary of State for India in Council ...	3 L R R 165	699
Monmotha Nath Das v. Harish Chandra Das ...	10 C W N 867 = 93 C 905	219
Moosa Haji Joonus v. Haji Abdul Rahim ...	7 Bom L R 447-30 B 197	511
-----Nooruni v. Haji Abdul Rahim Haji Hamed ...	Do Do	511
Moran v. Bhagbat Lal Saha ...	33 C 133	637
Morshia Barayat v. Elahi Bux Khan ...	3 C L J 381	256
Motan Mal v. Kripa Mal ...	79 P R 1906	598
Mothair Mira Taragan v. Ahmati Ahmed Pillai ...	29 M 232	905
Motilal Pertabchand v. Govindram Jaichand ...	7 Bom L R 385 = 30 B 83	348
-----v. Sunajmal Joharmal ...	30 B 167	575
-----Virchand v. The Collector of Ahmedabad ...	8 Bom L R 904 (F. B.)	103
Moti Ram v. East Indian Railway Company ...	108 P R 1906 (F. B.)	602
Mritunjoy Roy Chowdhry v. Kemathulla Narya ...	11 C W N 46	847
Mt. Ketki v. Kamal Lachan Pujari ...	2 N L R 123	522
Muhammad Bukhut v. Azman Reza ...	10 C W N 560	654
Muhammad Abdul Hai, Pleader, in the matter of ...	3 A L J 811 = A W N (1906) 268	30, I
-----Hamid v. Jairaj Mal ...	A W N (1906) 267 = 3 A L J 768	711
-----Akbar Husain Khan v. Izzat-un-nissa ...	A W N (1906) 23 = 3 A L J 113-28 A 333	585
-----v. Izzat-un-nissa ...	Do Do	585
-----Ali v. Hukam Kunwar ...	2 A L J 788 = A W N (1905) 264- 28 A 246	751
-----v. Than Singh ...	Do Do	751
-----Chiragh v. Mussammat Jawai ...	90 P L R 1906	304
-----Din v. Fateh Muhammad ...	24 P R 1906 96 P L R 1906	378
-----Farough v. Gokal Chand ...	3 P R 1906 = 109 P L R 1906	185
-----Jafar Khan v. Maizh-ar-ul-Husan ...	3 A L J 474 A W N (1906) 199	884
-----Jan v. Sadanand Pande ...	A W N (1906) 30-3 A L J 43 = 28 A 394	120
-----Khan v. Mussammat Sis Bano ...	95 P L R 1906 = 41 P R 1906	527
-----v. Sis Bano ...	Do Do	527
-----Qamar-ud-din Khan v. Lachmi Nath ...	95 P R 1906	26
-----Vahya v. Tarfa Dei ...	A W N (1906) 62	244
-----Yar v. Hahi Bakhsh ...	94 P R 1906	74
Mukh Ram v. Not Ram ...	100 P R 1906	401
Mukta Prasad ...	3 A L J 655 = A W N (1906) 277	558
-----v. Kumta Singh ...	3 A L J 655 A W N (1906) 277	558
Mukund Ram Sukal v. Ram Ratam ...	2 N L R 52	490
Mulchand Dagdu v. Govind Gopal Kulkarni ...	8 Bom L R 578 = 30 B 575	261
* -----v. Mulchand ...	6 P R 1905 (Rev) = 63 P L R 1906	148
-----Narotam v. Maneckchand Harjivan ...	8 Bom L R 8	358
Mulai Singh v. Rajwant Singh ...	A W N (1906) 68 = 3 A L J 842	122
Mulidhar v. Sher Singh ...	3 A L J 233 = A W N (1906) 112	714
Mulk Raj v. George Knight ...	10 P R 1906	349
Mumtaz-un-nissa v. Tufail Ahmad ...	A W N (1905) 269-28 A 264	645
Mundan Raman v. Ramasubba Aiyar Kulathoor Aiyar ...	21 T L R 41	584, 622, 672
Municipal Council of Cuddalore, the v. S. Subrahmaniyar Aiyar ...	16 M L J 101 = 29 M 329	115
Munisami Reddi v. Bothili Venkiah ...	16 M L J 969	527
Munna Khan v. Choda Singh ...	A W N (1906) 177-3 A L J 798 = 28 A 691	763
-----v. Chhoda Singh ...	Do Do	763
Munshi Bajrangi Sahai v. Udit Narain Singh ...	10 C W N 932	701

TABLE OF CASES.

xxx

Name of Case.	Volume and Page.	Column of Digest.
Munshi Ganga Bishen Singh v. Sheik Mahomed Jan	10 C W N 948 - 33 C 1193	71
-----Mahomed Hossain v. Based Sheikh	4 C I. J 485 - 11 C W N 71	64
-----Mazhar Hasan v. Behari Singh	3 A L J 567 = A W N (1906) 234 = 28 A 760	740
Murlidhar v. Chajju	A W N (1906) 304	564
-----v. Hari Lal	165 P L R 1906	VII
Murthi Khundan v. Ananthanarayana Pattar	16 M L J 462, 1 M L T 426	375, 709
Murugappa Chetti v. Nagappa Chetti	16 M L J 22 = 29 M 161	468
Musammam Mahbub Jan v. Nurud-din	22 P L R 1906	347
-----Muina v. Musammam Bachehi	A W N (1906) 165 - 3 A L J 551 = 28 A 655	882
-----Patraj Kuar v. Bhaiya Jank Parshad Singh	9 O C 354	272
-----Raj Kuar v. Nabi Bakhsh	9 O C 296	925
-----Zohra v. Mangu Lal	3 A L J 569 (F.B.) - A W N (1906) 223 - 28 A 753	127
Mussammam Atma Dei v. Pandit Bakht Narain	9 O C 185 (B)	138
-----Aziz Begam v. Mohan Lal	192 P L R 1906 = 32 P R 1906	679
-----Bholi v. Fakir	196 P L R 1906 = 62 P R 1906	396
-----Chiragh Bibi v. Mussammam Hassan	19 P R 1906 = 70 P L R 1906	336, 389
-----Dhan Devi v. Kanshi Ram	38 P R 1906 = 89 P L R 1906	392
-----Har Dev v. Charan Das	12 P L R 1906	385
-----Jai Devi v. Gokal Chand	131 P L R 1906 (F.B.)	868
-----Kundan Bibi v. Sree Narayan	11 C W N 135	342
-----Mamon v. Ghuansa	99 P R 1906 = 130 P L R 1906	401
-----Salia v. Kashi Nath	9 O C 119(B)	520
-----Santana v. Narpal Singh	9 O C 216	492
Musst. Etwaria v. Chandra Nath Mukerjee	10 C W N 763	463
Lachmi Das Mohutain v. Kissan Lal Pahari Mahaton Gayal	11 C W N 147 - 4 C I. J 537	155
Mutchanthu Pootathan v. Ponnau Padmanabhan	21 T L R 152	320
Muthan Chetty v. Ramaswamy Chetty	16 M L J 550	111
Muthoo Raman Chetty v. Krishna Pillai	15 M L J 478 = 29 M 72	43
Muthusami Pillai v. Arunachalam Chettiar	15 M L J 361 = 29 M 79	111
Muthu Veera Vandayan v. The Secretary of State for India in Council	1 M L T 278 = 29 M 461	41
Muthian Chetty v. Chinnathambi Chetty	16 M L J 6	109
Myhan v. Annavi Madan	16 M L J 99 = 29 M 234	596
Myne, <i>In the goods of</i>	33 C 625	433, 746
Nachiappa Chetiar v. Chinnaya Sami Naiker	*16 M L J 339 = 1 M L T 272 = 29 M 453	480
-----Sivasubramaniappandia	16 M L J 339 = 1 M L T 272 = 29 M 453	480
-----M N R N v. Sivasubramaniappandia Chinnayasami Naicker	1 M L T 272 = 29 M 453 = 16 M L J 339	480
Naffar Chandu Majie v. Jyoti Kumar Mukerjee	11 C W N 57	78
Nagendra Lal Chowdhury v. Nazsir Ali	10 C W N 503	73
Nageshar v. Sheo Mangal	9 O C 290	157
Nagina Singh v. Pura Chand	4 P L R 1906 = 11 P R 1906	601
Nakta Ram v. Moti Ram	A W N (1906) 191	684
Nambiamuttill Pokker v. Kethakki Kunhipattuna	29 M 226	660
Nanak Chand v. Ddrant	9 P R 1906 = 19 P L R 1906	38, 217, 344
-----v. Mr. Bryan Erskine Durant	9 P R 1906 = 19 P L R 1906	38, 217, 344
Nanda v. Ramji Lal	A W N (1906) 58 = 3 A L J 119	291
Nand Lal v. Ram Ratan Lodhi	2 N L R 187	918
Nanhi v. Gauri Shankar	2 A L J 654 = A W N (1906) 242 = 28 A 187	510
Naneevien v. Muthusawmy Dikshadar	15 M L J 445 = 29 M 421	920

* This is wrongly printed as 6 M L J 399.

Name of Case.	Volume and Page.	Column of Digest.
Narain Das v. Munsii and Shaman ...	1 P L R 1906	381
— v. Tirlook Tiwari ...	3 A L J 537 = A W N (1906), 243	512
Narasimha Appa Row v. Rangayya Apparow ...	16 M L J 178 = 29 M 437	472
Narasimhulu v. Narasimhulu ...	16 M L J 333 = 1 M L T 102	118
Narayanasaomy, S v. James D Rodriguez	3 L B R 227	499
Narayanasaami Padayachi v. Govindasami Pada- yachi	1 M L T 234 = 29 M 473 = 16 M L J 505	108
Narayan Bhagwant v. Srinivas Trimback	8 Bom. L R 226	489
— (Ganapatbat v. Timmaya Subhaya	8 Bom. L R 807	632
— (Ganesh Ghatete v. Bhioraj	2 N L R 87	191, 258
— (Permanand v. Nagindas Bhaidas	7 Bom. L R 641 = 30 B 113	318
— (Sadashiv v. Nimba Hari Shimpi	8 Bom. L R 547	222
— (Shankar v. The Secretary of State for India in Council ...	8 Bom L R 543 = 30 B 570	214
— (Rajwade v. The Secretary of State for India ...	8 Bom. L R 543 = 30 B 570	214
Narendra Bahadur Singh v. Achhaibar Shukul	3 A L J 453 = 28 A 647	160
Narendra Chandra Lahiri v. Nripendra Chandra Lahiri	10 C W N 540 = 4 C L J 51	538
— v. Suresh Chandra Lahiri ...	Do Do	588
— (Kumar Ghose v. Gora Chand Poddar ...	3 C L J 931 = 33 C 683	90
— (Nath Baruri v. Abhaya Charan Chatto- padhya ...	4 C L J 437 = 11 C W N 20 = 1 M L T 364 (F. B.)	163
Nasarulla Mia v. Amurudin ...	3 C L J 133	93
Nasir Ali Khan v. Natho Bibi ...	3 A L J 544 = A W N (1906), 215	935
— (un-nissa v. Ghafur-ud-din ...	A W N (1905) 263 = 28 A 244	239
Natha Singh v. Mohan Singh ...	93 P R 1906 = 163 P L R 1906	400
Naula Baksh v. Nuru Hak ...	A W N (1906) 17	424
Navabai Fulchand v. Sivubai Genu Korpe	8 Bom L R 761	687
Nawab v. Wallan ...	91 P R 1906	399
— (Ibn Husain Khan v. Munir Ahmad ...	9 O C 269 (B)	590
— (Mumtaz-ud-Dowla v. The Secretary of State for India in Council ...	9 O C 311 (B)	57
— (Zulfikar Khan v. Mussaminta Zainab Bogam ...	9 O C 49 (B)	415
Nawal Keshore v. Amir Khan ...	122 P R 1906	769
Nazir-ul-Zaman Khan v. Azim-ul-lah	A W N (1906) 216 = 3 A L J 705 = 28 A 741	422
Neelamega Sastri v. S Appiah Sastri	1 M L T 237 = 16 M L J 385 = 29 M 477	44
Nemi Chand v. Wallace ...	4 C L J 268 = 10 C W N 107	877
Netrapal Singh v. Kalyan Das ...	A W N (1906) 60 = 3 A L J 196 = 28 A 400	571
Nga Sa Gyi v. Nga Ye Ban ...	U B R (1905) Civ. Procedure 36	242
— (Saing v. Nga Lu Aung ...	U B R (1906) Evidence 13	435
— (Shwe Twa v. Nga Chit Son ...	U B R (1905) Contract 9	350
— (Tha Din Mi Tin v. Nga Po Chan	U B R (1906) Limitation 7	624
— v. ...	U B R (1906) Civ. Pro. Code, 42...	231
— (Tun Gyaw v. Mi Po Me ...	U B R (1906) Tort 5	663
Nilan Subramanian alias Sivanjanam v Chitam- barathan Mathevan ...	21 T L R 157	321
Nilawa Bharna Bashya v. Krishnappa Huwappa Maistri ...	8 Bom L R 350	705
Nilkanth Rao Udhoji v. Sambhoq Mali ...	2 N L R 1	569
Nisar Ali v. Ali Ali ...	A W N (1905) 218 = 28 A 133	580
— (Husain v. Nisar Ali ...	A W N (1906) 54 = 3 A L J 193	223
Nizam v. Gauhar	17 P R 1906 = 116 P L R 1906	388
Nrithya Gopal Biswas v. Administrator-General of Bengal ...	10 C W N 241	32
Nuruddin v. Musummat Chemuri ...	3 C L J 49	643
Nur-ul Nissa v. Gauhar-ul Nissa ...	61 P R 1906	395
Nusserwanji Cowasji v. Luxman Bhikaji ...	8 Bom L R 82 = 1 M L T 49 = 30 B 452	534
O' Conor v. Ghulam Haidar and Musummat- Sumati ...	3 A L J 365 = A W N (1906) 155 = 28 A 617	756

TABLE OF CASES.

xxxvii

Name of Case.	Volume and Page.	Column of Digest.
O'Connor, B. E., v. Kthulam Haidar	3 A L J 365 = A W N (1906) 155 = 28 A 617	756
Official Assignee of Bombay, The v. Brij Kishore	3 A L J 604 = A W N (1906) 250	533
Omam Sheikh v. Halakuri Sheikh	33 C 679	834
Orr v. Nagappa Chetty	16 M L J 30	234
— v. Rakkumarathi	29 M 83	111
Padam Kumari v. Suresh Kumari	28 A 458 = 3 A L J 200 = A W N (1906) 83	83, 437
Padmanabhan Nilakandan v. Kunchan Nathan	21 T L J 67	414
Palaniyandi Pillay v. Veerammal	29 M 77	49
Palukdary Jha v. Baljit Chowdhry	4 C L J 543	685
Panchanada Velan v. Vaithinatha Sastrial	16 M L J 63 = 29 M 333	809
Panchanan Sengha Roy v. Dwarka Nath Roy	3 C L J 29	51
Pandharinath Sakhrum v. Shankar Narayan Joshi	8 Bom L R 488	107
Pandit Maiku Lal v. Musammat Gulkandi	9 O C 32	301
Pandu Laxman More v. Balu Mahadu Patil	8 Bom L R 557	298
Pandurang v. Sakharchand	8 Bom L R 861	687
— Balaji v. Naga bin Dadu	8 Bom L R 610 = 30 B 598	409
— Apte v. Naga Dogdu Chagula	Do Do	409
Panna Lal v. Bull	30 P R 1906 = 82 P L R 1906	234
— Varjial v. Kankhanu Vani	8 Bom L R 798	106
Panna Mal v. Mr. W. Bull	30 P R 1906 = 82 P L R 1906	234
Parattahath Kunhi Nayan v. Parattahath Muhammad	16 M L J 351	565
Parbati Charan Roy v. Gobinda Chandra Kundu	4 C L J 246	446, 682
Parbhu Dayal v. Ram Ratan	9 O C 28	356
Parfitt v. Chain Suk	144 P R 1906	36
Parinappa Basanganda v. Shiddappa Giriappa	8 Bom L R 685 = 30 B 607	513
Parmeshari Das v. Kaka	121 P R 1906	141
Parsotam v. Gheda Lal	3 A L J 375 = A W N (1906), 283	887
— Narain v. Chedda Lal	Do Do	887
— Rao v. Janki Bai	A W N (1905), 206 = 28 A 109	272
Partab Singh v. Fatta	45 P R 1906 = 120 P L R 1906	758
Parwan Singh v. Bisheshar Singh	9 O C 63	704
Patha Muthammal v. Esup Rowther	29 M 365	783
Paulappa v. Lea Hangal	8 Bom L R 982	24
Paul Beier v. Chotalal Javerdas	30 B 1 = 6 Bom L R 948	339
Peary Lal Mullick v. Rani Moni Dassee	3 C L J 502 = 10 C W N 695 = 33 C 947	535
— Sinha v. Chandi Charan Sinha	11 C W N 163	242, 448, 477
— Mohan Mukherjee v. Jote Kumar Mukerjee	11 C W N 83	175, 728
— v. Mohendra Nath Mauna	4 C L J 566	302
Pemraj v. Umrao Singh	A W N (1906), 72 = 3 A L J 179	749
Peria Karuppan v. Velayutham Chetti	29 M 302	540
— Muthirian v. Karappanna Muthirian	29 M 370	274
Perianan Chetty v. Naggappa Mudaliar	16 M L J 543	VII
Permanand Rao v. Gobardan Sahai	A W N (1906) 198 = 3 A L J 804 = 28 A 667	703
Phani Singh v. Nawab Singh	A W N (1905), 233 = 28 A 161	542
Pir Baksh v. Faiz Mahomad	A W N (1906), 180	343
Pokhar Singh v. Muhammad Hussain Khan	3 A L J 451 = A W N (1906), 205 = 28 A 679	752
Porter A R Colonel v. W Ince	10 C W N 813	358
Pottukuchi Saramma v. Donepudi Seshayya	1 M L T 173	628
Prabh Dial v. Musammat Ishar Devi	164 P L R 1906	VIII
Prabhu v. Maya	104 P R 1906 = 135 P L R 1906	149
Prabhudan v. Bhigulal	2 N L R 92	717
Prag alias Nafhu v. The Deputy Commissioner of Bahmach	9 O C 65	745
— Das v. Baldeo Pershad	A W N (1906) 212	596
— Dat v. Chote Singh	9 O C 55 (B)	881
— Ra v. Murari Lal	51 P R 1906	398

Name of Case.	Volume and Page.	Column of Digest.
Pratab Narain Mukerjee v. The Secretary of State for India in Council ...	10 C W N 637 = 3 C L J 530 = 33 C 390	75
Pravat Chandra Gangopadhyaya v. Cherag Ali ...	4 C L J 320 = 11 C W N 62 = 33 C 607	86
Preman v. Sant Ram ...	77 P L R 1906	379
Probat Chandra Gangopadhyaya v. Chirag Ali ...	33 C 637 = 4 C L J 320 = 11 C W N 62	86
Protap Chandra Das v. Kamla Kanta Shaha ...	10 C W N 818	77
Pudmanand Singh v. Annat Lal Misser ...	4 C L J 428 (F. B.) = 11 C W N 38 = 1 M L T 355	227
Pullari Pillai alias Eravi Govindan v. Ramani Ramaru Kochunin Karthavu ...	21 T L R 125	772
* Pullala Venkataramanayya Pantulu v. Batehu Venkatarama Doss Pantulu Garu ...	16 M L J 69 (F. B.) = 29 M 200 = 1 M L T 28	489
Punjab Singh v. Khazan Singh ...	98 P R 1906 = 119 P L R 1906	399
Punnamma v. Perrazu ...	1 M T 183 = 16 M L J 307 (F. B.) = 29 M 390	506
Purna Chandra Mandal v. Radha Nath Das ...	4 C L J 141 = 33 C 867	631
Purshotam Murlidar v. Sitaram Bal Krishna ...	8 Bom. L R 606	105
Qamar-ud-Din v. Ahsan Hahi ...	140 P L R 1906	566
-----Khan v. Mani Ram ...	96 P R 1906	27
Radha Kishen v. Jamuna Parshad ...	9 O C 339	821
-----v. Karim-ulla ...	92 P R 1905 = 50 P L R 1906	534
-----Mal v. Sheru ...	19 P R 1905 (Rev.) = 60 P L R 1906	144
-----Prosad Mullick v. Rancee Moni Dassi ...	3 C L J 502 = 10 C W N 635 = 33 C 957 (S. B.)	21, 535
Radha Prosad Mullick v. Rani Moni Dassee ...	Do	21, 535
-----and Peary Lal Mullick v. Rani Moni Dassee ...	Do	21, 535
Radhe Lal v. Sheo Prasad ...	9 O C 214 (B)	261
Radhika Mohan Roy v. K. S. Bonnerjee ...	10 C W N 566	153
Raghavji Vizpal v. Narandas Parmanandas Raghbar Das v. Saig Ram ...	8 Bom. L R 921	332, 721, 921
Raghunathji Mani Singh v. Mahabir Singh ...	109 P R 1906 (F. B.) = A W N (1905) 195 = 2 A L J 564 = 28 A 78	249
Raghu Nath v. Mussammat Rahat Begam ...	3 A L J 611 = A W N (1906) 240	786
-----v. Rahat Begam ...	Do	731
Raghunathji Mulchand v. Varjivandas Madanji ...	8 Bom. L R 525 = 30 B 578	325
Raghunath Mulchand v. Varjivandas Madanji ...	30 B 578 = 8 Bom. L R 525	325
-----Saran Singh v. Sri Ram ...	3 A L J 579 (F. B.) = A W N (1906) 235 = 1 M L T 242 = 28 A 764	93
Ragu Ram v. Jowala Singh ...	32 P L R 1906	303
Rai Budreeda Mukim Bahadur v. Chuni Lal Johurry ...	10 C W N 581 = 33 C 789	296
-----Krishan Chandra v. Saidan Bibi ...	A W N (1905) 271 = 2 A L J 821 = 28 A 256	160
Rairan Rama Kaimal v. Sankaran Krishnan ...	21 T L R 196	584
Raisel Singh v. Bhola Ram ...	A W N (1906) 221	304
Raja Bhagwan Buxh Singh v. Mazhar Hussain Rajada v. Ichhu ...	9 O C 167 (B)	132
Raja Fazal Dad Khan v. Ata Muhammad ...	96 P R 1905 = 52 P L R 1906	389
-----Gokul Das v. The Eastern Mortgage and Agency Co., Ltd. ...	46 P L R 1906	150
-----Kavali Arunachella Row v. Sri Raju Rangiah Appa Rao ...	10 C W N 276 = 33 C 410 = 4 C L J 102	699
-----Bahadur Zemindar Garu v. Sri Raju Rangiah Appa Row Bahadur Garu ...	1 M L T 318 = 16 M L J 563 = 29 M 519	593
	Do	593

TABLE OF CASES.

xxxv

Name of Case.	Volume and Page.	Column of Digest.
Raja Issur Lal Singh v. Patroo Sahu Singh	10 C W N 284 - 33 C 378	..
Rajamma v. Ramakrishnayya	29 M 121	.. 50
Raja Muntaz Ali Khan v. Sarju Singh	9 O C 292	.. 741
— Pudmanand Singh v. Anant Lal Misser	11 C W N 38 = 1 M L T 355 - 4 C 1 J 421 (F. B.)	.. 227
— Ram v. Moti Ram	A W N (1906) 221	.. 864
— Rampal Singh v. Lal Ranchh Singh	9 O C 101	.. 263
— — v. Mussammatt Hafiza	9 O C 308	.. 767
— — Ramrajin Chakrabutty v. Indra Narayan Das	10 C W N 862 - 33 C 890	.. 915
Rajaratna Naidu v. Narasimha Chariar	28 M 301 - 16 M L J 143	.. 110
Raja Seth Gokul Das v. Debi Parshad	A W N (1906) 162 = 3 A L J 548 28 A 638	.. 705
Rajendra Lal Agarwalla v. Raj Coomar Debi	11 C W N 65	.. 519
Rajji v. Lal Chand	138 P R 1906	.. 9
Raj Keshore v. Durga Charan	A W N (1906) 272 - 3 A L J 755	.. 516
— — v. Durga Charan Lal	Do Do	.. 516
Rajnarain Mitra v. Anant Tarai	10 C W N 908	.. 94
Rajit Gramany v. Ammani Ammal	1 M L T 68 28 M 358	.. 481
Rakhal Chandra Tewari v. Hemangeni Debi	3 C L J 347	.. 592
— — v. Secretary of State for India in Council	10 C W N 841	.. 166, 305, 563
Rakhamba Pandrung v. Keshau Raghunatl Bhise	8 Bom L R 675	.. 606
— — — — — Ralli v. Walaiti Ram	80 P R 1906	.. 860
Ralli, Brothers in re	8 Bom L R 134	.. 865
— — — — — v. Noor Mahomed	8 Bom L R 955	.. 69
Ramachandra Sadashiv v. Laxman Sadashiv	8 Bom L R 892	.. 631
Ramacharittar Roy v. Bidhata Roy	10 C W N 992	.. 100
Ramachandraiyyar v. Muhammad Noorulla Sahib	1 M L T 314 (F. B.) - 16 M L J 477	.. 309
Ramachendraiyyer v. Mir Muhammed Noorulla Sahib	Do Do	.. 309
Ram Adhin v. Hanuman	9 O C 153	.. 372
Ramayen v. Venkataschellam Patter	1 M L T 329 - 16 M L J 554	.. 777
Ramakrishna Ayyar v. Subrahmanya Ayyen	29 M 305	.. 618
— — — — — Raju v. Katta Venkataswamy	29 M 87	.. 674
Raman Chetty v. S M R M Ollagappa Chetty	3 L B R 225	.. 260
Ramanatha Chettiar v. Kamotha Anthoni Udayan	16 M L J 432	.. 309
Ram Nath Chatterjee v. Kusum Kamini Debi	4 C L J 56	.. 492
Raman Govindan v. Raman Raman	21 T L R 159	.. 319, 667
Ramappa v. Ganpat	7 Bom L R 289 = 30 B 81	.. 215
— — — — — Bhikappa v. Ganpat	Do Do	.. 215
— — — — — v. Ganpat Aba Dhole	Do Do	.. 215
— — — — — Dareppa v. Bhairava Rama	8 Bom L R 812 - 30 B 625	.. 315
Ramasani v. Anandrazu	16 M L J 57	.. 112
— — — — — Chetty v. The Municipal Council, Tanjore	29 M 360	.. 115
Ramaswami Pandia Thalavar v. Anthappa Chettiar	16 M L J 422	.. 341
Ramaswamy Iyer v. Muthusawmy Iyer	1 M L T 397 - 16 M L J 541	.. 603
Ram Avatar Singh v. Chowdhuri Nursingh Narain Singh	3 C L J 12	.. 487
Ramawati Koer v. Manjhar Koer	4 C L J 74	.. 495
Ramaya v. Devappa Ganparya	7 Bom L R 642 = 30 B 109	.. 746
— — — — — Bin Subaya v. Devappa Ganparya	Do Do	.. 746
Ram Barun Singh v. Govind Singh	A W N (1906) 7 = 3 A L J 95 - 28 A 295	.. 677
— — — — — Bharos v. Ram Parsad	3 A L J 461 = A W N (1906), 197	.. 483
— — — — — Bharos v. Ram Prashad	3 A L J 461 = A W N (1906), 197	.. 483
— — — — — Bishen Raut v. Raja Ram	33 C 882	.. 93
— — — — — Chand v. Raj Hans	3 A L J 517 = A W N (1906) 241	.. 917

Name of Case.	Volume and Page.	Column of Digest.
Ram Chandra Goswami v. Jogendra Nath Banerjee	4 C L J 809	659
Ram Chandra Marwari v. Mudeahwar Singh	10 C W N 978 = 33 C 1158	183
Ram Chandra Panda v. Ram Krishna Mahapatra	33 C 507	508
Ram Charan v. Ajudhia Prasad	A W N (1905), 174 = 28 A 50	499
Ram Charan Ram v. Shooraj	3 A L J 226	126
—Sanyal v. Anukul Chandra Acharya	4 C L J 578	649
Ram Das v. Badri Narain	A W N (1906), 260 = 3 A L 1 778	207
—Dayal v. Ajudhia Prasad	A W N (1906), 40 = 3 A L J 81 = 28 A 328	164, 486
Ramdhari Singh v. M. H. Mackenzi	10 C W N 351	85
Ram Din v. Ikram-ud-din	3 A L J 686 = A W N (1906) 298	15
—v. Muhammad Ikram-ud-din	Do Do	15
Ramesh Chandra Dhar v. Karunamayoi Dutt	33 C 498	287
Ramesur Malia v. Ram Nati Bhattacharjee	3 C L J 103 = 33 C 462	573
Rameswar Singh v. Bhooneswar Jha	4 C L J 138 = 33 C 887	95
—v. Bhubaneshwar Jha	Do Do	95
Ramgati Mohurér v. Pran Hari Seal	3 C J L 201	559
Ram Gohari Lal Sahu & Chowdhry Babu Barsati Singh	10 C W N 910	914
Ram Gopal v. Harjas	123 P R 1906	248
—Bhattacharjee v. Narain Chandra Bandopadhyaya	3 C L J 15 = 10 C W N 510 = 33 C 315	309
—Mazumdar v. Prasanna Kumar Sanial	10 C W N 529	815
Ramgulam Singh v. Bishnu Pargash Narain Singh	11 C W N 48	94, 602
Ram Jas v. Sheo Prasad	2 A L J 640 = A W N (1905) 241 = 28 A 193	97
Ramji Mal v. Chhote Lal	3 A L J 661 = A W N (1906) 281	784
—Shapurji v. Ramji Edulji	30 B 319	422
Ram Kishen v. Chet Singh	13 P L R 1906	883
—v. Rani Bhagwan Kuar	131 P R 1906 = 161 P L R 1906	353
—Singh v. Sripal	9 O C 159	20
—Lal v. Balak Ram	9 O C 365	275
—v. Lukhpat Rai	3 A L J 240 = A W N (1906) 112	680
—Mohan Lal v. Mul Chand	A W N (1906), 169 = 2 A L J 700 = 28 A 89	498
—Narain Ganga Bissin v. Liladhur Lowje	10 C W N 614 = 33 C 1237	68
—Singh v. Sewak Ram	21 P R 1906	753
Ram Nidh Misr v. Ishar Dayal Misr	A W N (1906) 190	700
Rampal Singh v. Raja Mustafa Ali Khan	9 O C 273	834
Ram Pershad v. Hira	87 P R 1906	760
Ramrup Mahto v. H. Mannars	4 C L J 209	84, 727
—Sahai v. Kushal Misser	3 C L J 280	100
Ram Sarup v. Chajju Mal	3 A L J 607 = A W N (1906) 288	447
—v. Mubarak Singh	190 P L R 1905 = 1 P R 1906	790
—Sewak Das v. Dharam Das	9 O C 205 (B)	290
Ram Singh v. Salig Ram	A W N (1905) 193 = 2 A L J 711 = 28 A 84	262
—Tahal Singh v. Dubri Rai	A W N (1906) 21 = 28 A 310 = 3 A L J 838	375
Rani Ratan Kuar v. Ratin Lal Seth Mahowari	2 N L R 106	445
Ranga Chariar v. The Municipal Council of Kumbakonam	1 M L T 333 = 16 M L J 582 = 20 M 539	115
Ranganatha Mudaliar v. Baghirathi Ammal	1 M L T 227	41
Rang Lal v. Kamta Prasad	3 A L J 515 = A W N (1906) 247	761
Rani Indomati v. Jageshar	A W N (1906) 158 = 3 A L J 565 = 28 A 644	212
Rash Behari Shah v. Naritya Gopal Nundy	33 C 477 = 3 C L J 249	349
—Behary Shaw v. Nritya Gopal Nundy	Do Do	349

TABLE OF CASES.

xxvii

Name of Case.	Volume and Page.	Column of Digest.
Rash Behari Singh v. Thakur Joynanda Singh ...	4 C L J 475	243
Rasik Chandra Chowdhury v. Rajani Ranjan Chowdhury ...	10 C W N 286,	316
—Lall Dutt v. Bidhu Mukki Dasi ...	10 C W N 719 = 4 C L J 306 = 33 C 1094	203, 561
Rasul Bakhsh v. Nabi Bukhsh ...	91 P L R 1906	150
Ratan Chand Oswal v. Deb Nath Barua ...	10 C W N 303 = 4 C L J 530	633
—Singh v. Dular Singh ...	9 O C 289	766
Rathinavelu Mudaliar v. Kolandavelu Pillai ...	29 M 511 = 16 M L J 281	582
Ratnachalam Ayyar v. Venkatrama Ayyar ...	29 M 46	630
Ratnavelu Mudaliar v. Kolandavelu Pillai ...	16 M L J 281 = 29 M 511	582
Rattan Chand v. Ram Parshad ...	69 P R 1906 = 118 P L R 1906	492
Raufak Bakhsh Khan v. Roshan Zaman Khan ...	9 O C 246	647
Raushan Ali Khan Chowdhury v. Kali Mohan ...	4 C L J 79	904
—Moitra ...	8 Bom L R 638	103
Ravji Khandu Chambhar v. S B Fraser ...	29 M 300	331
Rangasawmy Naicken v. Gangammal ...	29 M 367 = 16 M L J 287	373
Reference under Court Fees Act, 1870 ...	25 P R 1906 = 81 P L R 1906	507
Rijhu Ram v. Mohan Lal ...	4 C L J 472	607
Robini Kumar Panja v. Raghu Nath Das ...	3 C L J 288	832
Roop Channossa Bibi v. Bejoychand Mahatap ...	29 M 1	515
—Lal v. Lakshmi Doss ...	10 C W N 149 = 33 C 363	75
Roy, R C v. Thakur Rati Jiwan Sing ...	33 C 985 = 4 C L J 219	88, 924
—Zuddi Sheik v. Kuli Nath Mookerjee ...	Do	Do
—Sheikh v. Kritarthanath Mukerjee ...	Do	Do
Rup Chand Ghosh v. Sarbeswreswar Chandra Chandra ...	10 C W N 747 = 3 C L J 629 = 33 C 915	442
—Ghosh v. Sarveswa Chandra Chunder ...	Do	Do
Rustomji Jijibhai, <i>In the matter of</i> ...	30 B 841 = 7 Bom L R 881	63
—B. Jijibhoy <i>In the matter of</i> ...	Do	Do
S. v. S. & B. ...	60 P R 1906	525
Sabapathy Mudaliar v. Seetharamiah ...	29 M 292	11
Sadagopa Ramanuja Periya Jeeyangar v. Lakshmi Doss ...	1 M L T 238 = 16 M L J 303	447
Sadananda Sarma v. Kali Sankar Bajpai ...	3 C L J 95	629
Saddan v. Kheme ...	15 P R 1906 = 117 P L R 1906	387
Sadha Ram v. Karam Chand ...	118 P R 1906	141
Sadho Singh v. Maharaja Parbhu Narain Singh ...	3 A L J 606 = A W N (1906) 251	816
—v. Tho Maharaja of Benares ...	A W N (1906) 251 = 3 A L J 606	816
Sadu Kaur v. Tadepally Basaviah ...	1 M L T 416	892
Sadhu Krishna Iyer v. Kuppan Iyengar ...	1 M L T 268 (F.B.) = 16 M L J 479	230
Sahadeb Ohali v. Ram Rudra Haldar ...	10 C W N 820	209
Saheb Lal v. Sukh Lal ...	2 N L R 121	783, 873
Saiyad Hashim v. Haji Abdul Rahman ...	A W N (1906), 187 = 3 A L J 467 = 28 A 698	908
Saiyid Sakhawat Husain v. Gajadhar Pershad ...	A W N (1906), 189	695
Sakharun Bhaskar Bapat v. Padmakar Mahadev ...	8 Bom L R 757 = 90 B 623	228
—Bhat ...	3 A L J 469 = 28 A 622	935
Sakhawat Husain v. Gajadhar Pershad ...	A W N (1906), 139 = 3 A L J 546	653
Salig Ram v. Amjad Khan ...	4 C L J 521	89
Samant Radha Charan Das v. Ananta Prasad Das ...	29 M 170 = 16 M L J 133	706
Saminathan Chettiar v. Swarnappa Naicker ...	16 M L J 857	52
Sami Row v. Eliavatha Row Gayabavadu ...	3 L B R 188	889
San Dun v. Meirr Gale ...	29 M 500	603
Sankaralingam Chettiar v. S. A. Ralli ...	21 T L R 56	518
Sankara Murthia Pillai Sivasailom Pillai v. Oppanayana Nachiar Ammal ...	2 N L R 29	726
Sankaram Sonar v. Madho Rao ...	1 M L T 393	776
Santhana Gopala Sawmi Odayar v. Sundarami Odayar ...	5 P R 1905 (Rev) = 62 P L R 1906	151
Sant Ram v. Sarup Das ...	119 P R 1906	702
—Singh v. Jewan Mal ...	8 Bom L R 35 = 30 B 637	643
Sarabai v. Rajibai ...		

Name of Case.	Volume and Page.	Column of Digest.
Saran Das v. Atar Bibi ...	91 P R 1905-44 P L R 1906...	717
Sarat Chandra Bose v. The Secretary of State for India ...	10 C-W N 250	65
----- Ghose v. Shyama Chandra Sinha ...	10 C W N 930	86
----- Naskar v. Hari Pada Mistri ...	4 C L J 938	326
----- Roy v. Karaman Malo ...	38 C 1849	458
----- Roy Chaudhury v. Dawlat Singh ...	10 C W N 723	662
Sarat Chandra Sil v. Sheikh Meher ...	4 C L J 490	718
Sardar Singh v. Ijaz Hussain Khan ...	A W N (1906), 194=28 A 614	757
Saran Das v. Mussummat Attar Bibi ...	91 P L R 1905-44 P L R 1906	717
Saroda Prosad Chatterjee v. Sandamini Dehya ...	3 C L J 181	204
Sarvaickar, Mr., in the matter of ...	3 A L J 592=1 M L T 252 (F.B.) = A W N (1906), 226	580
Sashi Bhusan Bakshi v. Mahomed Matain ...	4 C L J 548	191
Sasi Bhusan Pal v. Chandra Peshkar ...	4 C L J 41-33 C 861	897
----- v. The Secretary of State for India ...	Do Do	897
Sandagur Singh v. Sant Ram ...	87 P L R 1906-103 P R 1906	682
Sayad Ata Muhammad v. Nur-ul-Hassan ...	25 P L R 1906	385
Secretary of State for India, The v. Bhagi-rathibai ...	8 Bom L R 689 (F. B.)	280
----- in Council v. Vamanrao Narayan ...	7 Bom L R 735=30 B 137	826
----- The v. Babu Tarni Prasanna Roy ...	9 O C 249	638
----- The v. Belchambers ...	3 C L J 160-10 C W N 289=33 C 396	60
----- The v. Thakur Mohar Singh ...	9 O C 301	119, 742
*----- The v. P. R. Venkatasalu Naidu ...	1 M L T 135	V
Seeta Lakshmi Ammal v. Srinivasan Iyengar ...	16 M L J 412	928
Seetharama Iyer v. Chinna Chenga Reddy ...	16 M L J 33	250
Sein Tun v. Mi On Kra Zau ...	3 L B R 219	188
Sellappa Reddy v. Vridhachala Reddy ...	16 M L J 569=1 M L T 323	108, 352
Senthivelu Mudaliar v. Varadachariar ...	16 M L J 353	855
Seth Chhatar Mal v. Lala Bala Nath ...	A W N (1906) 202=3 A L J 634= 28 A 712	708
----- Mohan Lal Parwar v. Chowdhri Chummi Lal Parwar ...	2 N L R 4	529
----- Mulchand v. Mt. Janki ...	2 N L R 65	181
Seth Narasingh Das Mohkum Chand v. Seth Tara Chand Mohkum Chand ...	2 N L R 57	331
Sewa Ram v. Kishen Ram ...	147 P L R 1906	543
Sewdnt Roy v. Sree Canto Maity ...	10 C W N 634 33 C 639	293
Shahamat Husain v. Murli Prasad ...	9 O C 224	221
Shaik Buffati v. Kalloo Khan ...	3 L B R 194	280
Shaikh Wazir Ali v. Janki Prasad and others ...	A W N (1906) 183=3 A L J 458= 28 A 671	266
Shama Charan Nandi v. Abhiram Goswami ...	10 C W N 738 3 C L J 506=33 C 511	225, 434, 508, 571, 591, 618, 623
Sha Mannag v. T A Agamberan Chetty ...	3 L B R 172	271
Shamsudin v. Abdul Hoosein ...	8 Bom L R 252	644
Shankar Parshad v. Hamid Ali Khan ...	9 O C 169	752
Shankarappa Irappa v. Kotappa Channappa ...	8 Bom L R 516	213
Shapurji Bezonji Motivalla v. Dossabhoj Bezonji Motivalla ...	7 Bom L R 988=30 B 359	23
Sha Vadilal Hakamchand v. Sha Fulchand Umedram ...	30 B 56=7 Bom L R 664	316
Shaw Wallace & Co v. Gordhandas Khato ...	8 Bom L R 56=30 B 364	575
Sheik Fakir v. Beraj Mohini Dasi ...	11 C W N 116	97
----- v. Mohamed Ravthar, K V S v. The B. I. S. N. Company ...	4 M L T 387=16 M L J 573	197

TABLE OF CASES.

XXIX

Name of Case.	Volume and Page.	Column of Digest.
Sheikh Milan v. Mohamed Ali ...	10 C W N 484	559
— Muhammad Alam v. Raghbir Singh ...	9 O C 32	810
Shelly Bannerjee, K. K. v. The Commissioners of the Port of Calcutta ...	3 C L J 585 = 33 C 1243	74
Sheoji Singh v. Sheoji Singh ...	129 P R 1906	600
Sheonandan Khan v. Maharnja Parbhu Narain Singh ...	3 A L J 663 = A W N (1906) 281	493
— v. The Maharaja of Benares ...	Do Do	493
Sheo Pattan v. Raja Rampal Singh ...	9 O C 37 (B.)	137
— Ratan v. Ghisiawan ...	9 O C 326	223
— Misra v. Ram Dhani ...	9 O C 322	222
— Tahal Ojha v. Sheodan Rai ...	2 A L J 630 (F.B.) = A W N (1905) 244 = 28 A 174	906
Shuve, The v. Tha Kado ...	3 L B R 169	285
Shiam Lal v. Ganesh Lal ...	A W N (1906), 33—3 A L J 10 = 28 A 288	475
— Sundar Lal v. Bhairon Singh ...	A W N (1906), 51—3 A L J 185	287
— v. Ganesh Prasad ...	3 A L J 465 = A W N (1906), 205 = 28 A 674	916
— v. Kaisar Zamani Begam ...	A W N (1906), 315	307
Shib Kunwar Singh v. Sheo Prasad Singh ...	A W N (1906), 68—3 A L J 200—28 A 418	257
— Narain Lal v. Abdul Rafi Khan ...	A W N (1906), 289—3 A L J 669	559
— v. Maulvi Muhammad Abdul Rofi Khan ...	Do Do	559
— Sabitri Prasad v. The Collector of Meerut ...	3 A L J 747—A W N (1906), 295	942
— Sahai v. His Highness Maharaja Balbir Singh of Faridkote ...	8 P R 1905 (Rev) = 67 P L R 1906	142
Shib Prasad Chandhuri v. Vaki Pali ...	33 C 601	225
— Singh v. Gandharp Singh ...	A W N (1906), 55—3 A L J 165 = 28 A 391	590
Shibu Bera v. Chandra Mohan Jana ...	33 C 849	209
Shi Gopal v. Ayesha Begam ...	A W N (1906), 264—3 A L J 755	741
Shivaram Kondo Kulkarni v. Krishnabai Kashi-nath ...	8 Bom L R 897	29
Shiva Rao v. Nagappa ...	29 M 117	66
Shive Bin v. Ma Them ...	3 L B R 168	274
Shivalingappa Basappa v. Chanasappa Fakirappa ...	8 Bom L R 16 = 1 M L T 46 = 30 B 337	254
Shivlingrow Jagdeorao v. Rango Ramchand-dra ...	8 Bom L R 777	292
Shoobhage Koeri v. Bokhori Ram ...	4 C L J 390	418
Shriram Sadasheo Balkrishna Joshi v. Gan-pati Kumbi ...	2 N L R 79	738
Shudhangshu Bhusan Roy Chowdhury v. Bejoy Kali Roy Chowdhury ...	3 C L J 376	80
Shwe The v. Tha Kado ...	3 L B R 169	709
Shyama Charan Bhattacharya v. Akhoy Kumar Mitter ...	10 C W N 787	963
— Nundy v. Abhiram Goswami ...	3 C L J 306 = 10 C W N 738 = 33 C 511	225, 494, 503, 571, 591, 618, 622.
Shyamanand Das v. Raj Narain Das ...	4 C L J 568	76, 271, 599
Shyan Lal v. Bashirud Din ...	3 A L J 630 = A W N (1906) 290 = 28 A 778	684
Sidha Gopal Brahmin v. Puran ...	2 N L R 49	165
Sidharathrai Sojanrai v. Anantram Baldeodas ...	8 Bom L R 567	624
Singaram Coad Syndicate Ltd. v. Indra Nath Chatterjee ...	10 C W N 173	528
Sita Koer v. Deo Nath Sahay ...	3 C L J 370	939
— Ram v. Kushi ...	9 O C 233	681

Name of Case.	Volume and Page.	Column of Digest.
Sita Ram Singh v. Pokhapal Singh ...	3 A L J 576 (F.B.) = A W N (1906) 288 = 1 M L T 447 = 28 A 749 ...	816
Sobha Singh v. Nand Singh ...	56 P, R 1906 = 101 P L R 1906 ...	145
Soma Sundaram Chettiar v. Narasimhachariar ...	16 M L J 103 = 29 M 212 ...	776
----- Pillai v. Krishnasawmy Naidu ...	29 M 183 ...	241
Sonu Singh v. Behari Singh ...	33 C 283 ...	922
Soosaya Pillai v. Aiyakannu Pillai ...	16 M L J 475 = 1 M L T 348 = 29 M 529 ...	625
Sorabji Cursetji v. The Scind and Punjab Cotton Press Co. Ltd. ...	8 Bom L R 478 ...	323
Soosaya Pillai T A v. Aiyakannu Pillai ...	1 M L T 848 = 16 M L J 475 = 29 M 529 ...	625
Sreeman Raju Pathayam Veerusurappa Nayam- varu v. Errappa Naidu ...	1 M L T 287 = 20 M 484 = 16 M L J 499 ...	481
Sri Harakh v. Ram Dat ...	9 O C 80 ...	308
----- Maharani Beni Pershad Koer v. Ramdahir Pandey ...	10 C W N 216 ...	91
Srimaty Gayanoda Bala Dasce v. Butto Krishna Das Bairagee ...	10 C W N 857 = 33 C 1040 ...	279
Sri Nath Shaha v. L E Ralli and others ...	10 C W N 253 (F.B.) ...	661
Srinibash Das v. Monmohini Dasi ...	3 C L J 224 ...	324, 366, 519, 863
Srinivasamoorthy v. Venkata Varada Iyengar ...	1 M L T 71* = 16 M L J 238 = 29 M 239 ...	579, 941
Srinivasamoorthy, S v. N T Venkata Varada Iyengar ...	Do Do ...	579, 941
-----, S otherwise called Shamanna v. (1) N T Venkata Varada Iyengar alias N T Shamanna (2) S Venkata Varada Iyengar alias S Shamanna ...	Do Do ...	579, 941
Srinivasa Raghava Ayyangar v. Pichaikaran ...	29 M 184 ...	854
----- Row Sahib v. Yemunabhai Ammal ...	29 M 84 = 16 M L J 50 ...	909
Sri Raja Simhadri Appa Rao v. Prattipathi Ramaiah ...	29 M 29 ...	674
----- Venkata Narasimha Appa Row v. Sri Rajah Rangayya Appa Row ...	29 M 487 = 16 M L J 178 ...	472
Sriram Chakravarti v. Hari Narain Singh Deo ...	10 C W N 425 = 3 C L J 59 = 33 C 54 ...	671
----- Chakraburty v. Kumar Huri Narain Sinha ...	Do Do ...	671
----- Chakrabutty v. Kumar Hari Narain Sinha Deo Bahadur ...	Do Do ...	671
Sri Raja Simhadri Appa Rao Bahadur, by his guardian Sri Raja Ramachandra Appa Rao Bahadur v. Chelasane Bhadrappa ...	1 M L T 414 ...	851
Sriramulu v. Dalayya ...	16 M L J 54 ...	882
Stamp Act 1899 No 12 of 1905, Reference under ...	2 L B R 205 (F.B.) ...	865
Stewart, M R v. Ram Chand ...	20 P L R 1906 = 26 P R 1906 ...	345, 346
Subba Narayana Vathiar v. K Ramaswami Iyer ...	1 M L T 977† (F.B.) = 16 M L J 508 ...	87
----- Baddi v. Doraisami Pathan ...	16 M L J 491 ...	523
Subbaroyadu v. Gangayya ...	29 M 329 ...	852
Sub-Collector of Godavari v. Siragum Subbara- yudu ...	16 M L J 551 ...	1 V
Subraya Prabhu v. Manjunath Bhakt ...	29 M 44 ...	176
Sudevi Devi S M v. Sovaram Agarwallah ...	10 C W N 306 ...	443
Sujan Singh v. Fateh Muhammad ...	124 P R 1906 ...	317
Sukan Teli v. Bipal Teli ...	4 C L J 988 ...	418
Sultan Khan v. Radha Krishna Singh ...	4 C L J 620 ...	73

* In Col 941, this is wrongly printed as 1 M L T 7.

† This case is wrongly printed as 1 M L T in Col 87 887.

TABLE OF CASES.

XLI

Name of Case.	Volume and Page.	Column of Digest.
Sultan Mahomed v. Alim Khan ...	3 P L R 1906	608
Sumera v. Piare Lal ...	A W N (1905), 201 = 2 A L J 665 = 28 A 422	126
Sumer Chand v. Wahid Husain Khan ...	3 A L J 819 = A W N (1906), 310	264
Sumsuddin Gulam Hoosein v. Abdul Hoosein Kalimoodin ...	8 Bom. L R 781	651
Sunder Jha v. Bansman Jha ...	10 C W N 508 = 33 C 967	216
— Lal v. Chhitar Mal ...	3 A L J 644 = A W N (1906), 242	816
— v. Ram Ghulam ...	3 A L J 816 = A W N (1906), 149	863
Suraj Prasad v. Bapu Bishambhar Nath ...	9 O C 42 (B)	270
Surendranath Ghose v. Beni Madhab Misra ...	10 C W N 274	263
Surja Narain Mantadal v. Nanda Lal Sinha ...	33 C 1212	669
Suraj Bali Prasad v. Thomas, H E ...	A W N (1906) 175 = 2 A L J 714 = = 28 A 48	793
— Pershad v. Phul Singh ...	A W N (1906) 180	787
Sura Singh v. Sant Singh ...	3 P R 1906 = 122 P L R 1906	832
Surat City Municipality, The v. Chunilal Manik- lal Gandhi ...	8 Bom L R 209 = 30 B 409	864
Surendra Narain Sinha v. Hari Mohan Misser ...	33 C 1201	542
— Narian Mustafi v. Sauravini Dasi ...	3 C L J 339 = 10 C W N 535	524
Syed Abu Jafar v. Maharaja Sir Partab Narain Singh ...	9 O C 129 (B.)	138
— Ali v. Najaba Ali ...	11 C W N 143	741
— Sajjad v. Bhajan Singh ...	3 A L J 970 = A W N (1906) 157	244
— Farzand Husain v. Galab Chand ...	9 O C 227	181
— Husain v. Babu Durga Charan ...	9 O C 815	777
— Serapat Hossein v. Tarini Prosad Dobey ...	11 C W N 141	569
— Talip Husain v. Ram Charan ...	9 O C 284	610
Tadepalli Subba Row v. Nawab Sayed Mir Gulam Alikhan of Ranganapalli ...	29 M 69	548
Tadhin Pashad Singh v. Sardar Coommar Nara- yan Singh ...	10 C W N 234	278
Talapoori Appiah v. Maram Reddi Rami Reddi ...	1 M L T 294 = 16 M L J 503	912
Tangamalai Nachiar v. Subbammal ...	16 M L J 20	933
Tants v. Gajadhar ...	2 N L R 98	190
Tara Chand Marwari v. Ram Nath Singh ...	4 C L J 473	448
— Singh v. Khushal Kunwar ...	A W N (1906) 110 = 3 A L J 349 = 28 A 610	125
Tarif Dafadar v. Khotejannessa Bibi ...	10 C W N 981	172
Tasaddug Husain Khan v. Wazir Ali Khan ...	9 P L R 1905	413
Tejnath Dube v. Loknath Dube ...	2 N L R 7	273
Teju v. Kanhaya ...	151 P L R 1906	617
Tek Chand v. Soheli Singh ...	65 P R 1906	693
Thakdi Hajji v. Budrudin Saib ...	29 M 208	661
Thakur Bakhsh v. Bhagwan Din ...	9 O C 142	363
Thakur Das v. Beechey ...	49 P R 1906 = 106 P L R 1906 (F.B.)	184
Thakur Das v. Metan Mal ...	77 P R 1906	398
— v. Muhammad Bakhsh ...	74 P L R 1906	794
— Dassee Dassee ...	33 C 827	747
Thakurian Chhabraj Koer v. B. Gopal Lal ...	9 O C 113 (B)	134
Thakur Jawahir Singh v. Thakur Sardar Kuar ...	9 O C 18	901
— Mani Singh v. Dai Rani Koeri ...	33 C 1079	516, 598
— Mohamed Nawab Alikhan v. Wahid Ali ...	9 O C 179 (B.)	553
Thein Pe v. U Pet ...	3 L B R 173 (F.B.)	190
Thimma Reddi v. Chenna Reddi ...	16 M L J 18	661
Thommen Ittiavka v. Harihara Aiyar Narayana Aiyar ...	31 T L R 199	794
Thrikkat Madathil Raman v. Thiruthiyil Krishnan Nair ...	16 M L J 48 = 29 M 153 (F.B.)	210
Tika Bai v. Godha Ram ...	145 P L R 1906	49
— Ram Narain Singh v. Sewak Ram ...	110 P L R 1906	140
Tirbeni Sahi v. Muhammad Umar ...	A W N (1905), 265 = 3 A L J 4 = 28 A 24	482
Tiruvengadathiengar v. Vaidinatha Ayyar ...	29 M 303	294

Name of Case.	Volume and Page.	Column of Digest.
Town Municipality of Jambusar, The v. Girja-shankar Narsaram	7 Bom L R 655 = 30 B 37	662
Trailokya Nath Adhya v. Pullu Behari Baral...	3 C L J 385	259
Trimbaerao Anandao v. Balwant 'rao Narayan	7 Bom L R 659 = 30 B 101	25
Mantri v. Balwantrao	Do	25
Narayan Row Mantri	Do	25
Tukaram Manaji Dhangar v. Kamchandrar Hari Peshkar	2 N L R 25	708
Tulsha Kunwar v. Jageshwar Prasad	A W N (1906), 114 = 3 A L J 372 = 28 A 563	351
Tulsi Das v. Shoo Namin	A W N (1906), 53 = 3 A L J 336 = 28 A 375	252
Tyob Beg Mahomed v. Alli Bhai Mangulji	8 Bom L R 803	232
Ulagappan Ambalam v. Chidanabaram Chetty...	29 M 497	531
Uma Churan Mahaldar v. Narendra Nath Basu	10 C W N 126 = 33 C 273	78
Umar Khan v. Khadin Husain	9 O C 76 (B)	135
Umaruddin v. Janto	101 P R 1906 = 156 P L R 1906	401
Umar v. Mussammat Janto	101 P R 1906 = 156 P L R 1906	401
Ematera Gupta v. Uma Charan Sen	3 C L J 52	902
Umedali Bhuya v. Rajalakshmi Debya	1 C L J 538 = 10 C W N 190 = 33 C 84	101
Umesh Chandra Roy v. Gour Lal Chaudhury	10 C W N 1042	365
Unrao Jowan Patel v. Munnumien Musalman	2 N L R 23	852
Upendra Nath Hazra v. Ram Nath Chowdhry	33 C 630	831
Uthandi Mudali v. Raghavachari	16 M L J 106 = 29 M 307	933
Uttain Ishlok Rai v. Ram Narain Rai	A W N (1906) 44 = 3 A L J 171* = 28 A 365	810
Vadilal Hakamehand v. Fulchand Umedram	7 Bom L R 664 = 30 B 56	316
Vadilal v. Shakulchand v. G F Burditt & co	7 Bom L R 272 = 30 B 61	876
Vaidhianatha Aiyar Ramaswamy Aiyar v. Kanakku Kuttalanathan Velayudhan	21 T L R 236	428, 665
Vamadava Desiker v. Murugesu Mudali	29 M 75	113
Vanamamalai Bhushyakar v. Krishnasami Thathachariar	16 M L J 150	802
Vanamikalinga Mudali v. Chidambara Chetty	29 M 37	913
Vava Adima v. The Dewan of Travancore	21 T L R 215	843
Veerareddi v. Bapireddi	16 M L J 395 = 1 M L T 153 (F. B.) = 29 M 336	890
Veera Soorappa Nayani v. Errappa Naidu	29 M 484 = 1 M L T 287 = 16 M L J 499	481
Veir Singh v. Sir Mukh Singh	84 P R 1906	931
Velayudhan Nilakantan v. Krishnan Padmanabhan	21 T L R 138	549
Vellappa bin Parasharampa v. Desayappa bin Khalilappa	7 Bom L R 739 = 30 B 218	603
Venkappachari v. Manjunatha Kampti	16 M L J 526	206
Venkappa Timmappa v. Fakirgoda Govindgowda	8 Bom L R 346	470
Venkatachalam Chetty v. Veerappa Pillai	29 M 314	251
Venkataappa Naick v. Subba Naik	16 M L J 59	831
Venkataramanayya Pantulu v. Venkataramana Doss Pantulu Garu	1 M L T 28 (F. B.) = 29 M 200 = 16 M L J 69	489
Venkataramiah Pantulu v. Ramakrishna Pantulu	29 M 305	833
Vilayat Husen v. Maharajah Mahendra Chandra Nandy	A W N (1905), 198 = 28 A 88	303
Vithu Govinda v. Ramji Yelluji	8 Bom L R 19 = 1 M L T 63	28
Voss, A E v. Secretary of State for India	33 C 669	845

* This is wrongly printed as 3 A L J 171 in Col. 810.

† This is wrongly printed in Col. 489 as Kakarla Abbaya v. Raja Venkata Papayya Rao.

‡ This is wrongly printed as A W N (1905), 108 in Col. 308.

TABLE OF CASES.

xiii

Name of Case,	Volume and Page.	Column of Digest.
Vythilinga Nadan v. Narayana Sami Ayyan ...	16 M L J 364	892
Vythilingam Pillai, V. v. Kuthiravattath Nair ...	16 M L J 358 - 1 M L T 290 = 29 M	770
Wadhawa Mal v. Wadhawa ...	144 P L R 1906	281
Waheda Khatun v. Bulaqui Das ...	8 A L J 385 = A W N (1906), 140	552
Wajid Khan v. Dargahi Khan ...	9 O C 181	740
Wali Muhammad v. Mariam Bi ...	52 P R 1906 = 102 P L R 1906	727
----- v. Musammatt Mariam Bi ...	Do	727
Wali-ullah v. Durga Prasad ...	A W N (1906) 38 = 3 A L J 181	281
-----	A 840	876
Waman Habibi v. Changu Patil ...	8 Bom L R 87	840
----- Hari. Desh Pande v. Hari Vathal		
Parulekar ...	8 Bom L R 932	210
Wasawa Singh v. Lal Singh ...	43 P R 1906 (F. B.) 104 P L R	759
-----	1906	757
Wasinzaman v. Nasiran Bibi ...	A W N (1906) 160 = 3 A L J 843	861
Wuthawa, W alias Nga Tun Min v. Nga Po	17 B R (1906) Specific Relief 90	382
Wazira and Sukha v. Ram Singh ...	14 P L R 1906 = 36 P R 1906	206
Wazir Ali v. Janki Prasad ...	3 A L J 458 = A W N (1906) 183 =	757
-----	28 A 671	226
Wazir-un Nissa v. Nisiran Bibi ...	A W N (1906) 160 = 3 A L J 843	533
Wilayati Begum v. Ram Lal ...	A W N (1906) 63	609
Woonwalla & Co. R. S. v. N C Macleod	8 Bom L R 470 = 30 B 515	609
Yakub Ali Khan v. Kishan Lal ...	A W N (1906) 216 = 28 A 743	609
Yakub Ali Khan v. Lala Kishun Lal	Do	609
Yarladda Veeraraghavayya v. Gorantla		
Ramayya ...	15 M L J 484 = 29 M 111	198
Yedu Yedu v. Kesarbai Joharmal ...	8 Bom L R 110	887
Yellappa v. Desayappa ...	7 Bom L R 739 = 30 B 218	608
Yelunali Chetti v. Srinivasa Chetti ...	29 M 294	265
Yesa bin Rafi Bolya v. Sukaram Gopal Ganu.	7 Bom L R 941 = 30 B 290	107
Zaer Hussain Khan v. Kurshed Jan...	3 A L J 266 = A W N (1906) 99 = 28	47
-----	A 545 (F. B.)	372
Zaharia v. Gopal ...	3 A L J 511 = A W N (1906) 195	129
Zahur Ali v. Sher Ali ...	A W N (1906) 5 = 3 A L J 20 = 28 A	165
-----	283	127
Zamindars of Dhar v. Rana ...	53 P R 1906 = 103 P L R 1906	931
Zohra v. Mangul Lal ...	28 A 753 = A W N (1906) 223 = 3 A	743
-----	L J 569 (F. B.)	65
Zorawar Singh v. Dewa... ..	142 P R 1906	
Zulhekapai v. Ayeshabai... ..	7 Bom. L R 753 = 30 B 196	
Zulfiakar Khan v. The Collector of Mianwali ...	90 P R 1905 = 49 P L R 1906	

TABLE OF CASES, OVER-RULED, FOLLOWED, &c.

I. L. R. Allahabad Series.

1 A 48, Musammat Gunga v. Ghasita...R...3 A	
L J 537 = A W N (1906) 248 ...	512
1 A 57, Hamir Singh v. Musammat Zakia...R...	
9 O C 97 ...	649
1 A 77, Baldeo Das v. Sham Lal...R...10 C W	
N 765 = 38 C 1119 ...	474
1 A 206, * The Municipal Committee of Moradabad v. Chatri Singh...D...A W N	
(1906) 107 = 3 A L J 341 = 28 A 600	
...	121
1 A 490, Dirgaj Singh v. Debi Singh ...R...2 N	
L R 118 ...	718
1 A 521, Abadi Begam v. Imam Begam...R...A	
W N (1906) 177 = 3 A L J 798 = 28 A 691	
...	768
1 A 538, Hasan Ali v. Mehdi Husain...R...4 C L	
J 578 ...	649
...	F...4 C L
J 485 = 11 C W N 71 ...	641 & 642
...	R...90.C.
97 ...	649
1 A 549, Kanahi Ram v. Biddya Ram ...F...A	
W N. (1905) 205 = 2 A L J 663 = 28 A 288	
...	13
1 A 596, Gulzari Lal v. The Collector of Bareilly	
* ...R...10 C W N 857 = 38 C 1040	
...	279 & 280
1 A 644, Jawahir Lal v. Narain Das...F...A W N	
(1906) 55 = 3 A L J 165 = 28 A 391...590	
2 A 94, Shafi-ud-din v. Lochan Singh...F...21	
T L R 183 ...	635
2 A 129, Bindu Prasad v. Madhu Prasad...R...2	
N L R 179 ...	722
2 A 196, The Collector of Moradabad v. Muhammad Daim ...R...10 C W N 857 = 38 C 1040	
...	279 & 280
2 A 241, Skinner v. Orde ...R...8 L B R 194...280	
† 2 A 289, Manni Kasgundhan v. Crooke...D...	
A W N (1906) 107 = 3 A L J 341 = 28 A 600*	
...	121

* This is a mistake for * 1 A 289.

† This is a mistake for 2 A 296...

2 A 290, Sultan Kuar v. Gulzari Lal...R...3 A	
L J 585(F.B.) = A W N (1906) 236 = 1	
M L T 247 = 28 A 771 ...	253 & 254
2 A 474, Shoo Prasad v. Miller...F...3 A L J	
604 = A W N (1906) 250 ...	583
2 A 554, Safdar Ali v. Lachmon das...R...10	
C W N 551 = 3 C L J 576 = 38 C 613	
...	787
...	F...2 N
L R 121 ...	788
2 A 565, Kuray Mal v. Puran Mal...F...A W N	
(1905) 225 = 28 A 155 ...	898
2 A 682, Chedi Lal v. Kirath Chand...F...38 C	
1282 ...	874
2 A 720, Ram Prasad v. Sukh Dai...R...8 Bom	
L R 885 ...	47 & 370
2 A 807, Jagat Narain v. Qutub Husain...D...	
29 M 217 ...	908
2 A 881, Wilayat Husain v. Allah Rakhi...F...	
A W N (1906) 136 = 3 A L J 482... 825	
2 A 905, * Chandika Singh v. Pohkar Singh	
...Distd...2 A L J 630 (F.B.) = A W N	
(1905) 244 = 28 A 174 ...	906
2 A 906, Chandika Singh v. Pokkar Singh	
...Distd...2 A L J 630 (F.B.)...A W N	
(1905) 244 = 28 A 174 ...	906
3 A 45, Gauri Sahai v. Rukko ...F...2 A L J	
654 = A W N (1905) 242 = 28 A 187...510	
..., Gauri Sahai v. Rukko ...F...A W N	
(1906) 13 = 3 A L J 87 = 28 A 307...482	
3 A 157, Himmat Singh v. Sewa Ram...F...2 N	
L R 121 ...	788
3 A 424, Imam-un-nissa Bibi v. Liakat Husain	
...Distd...2 A L J 640 = A W N (1905)	
241 = 28 A 193 ...	94
3 A 484, Khpir-un-nissa v. Gauri Shankar...D	
...A W N (1906) 152 = 3 A L J 845 = 28	
A 651 ...	626
3 A 600, Husain Ali v. Hafex Ali...F...4 C L J	
510 ...	612
3 A 712, Kishen Lal v. Kinlock...R...2 N L R.	
174 ...	618

* This is a mistake for 2 A 906

3 A 852, Manji Ram v. Tara Singh... Refd. to... A W N (1905) 176=2 A L J 507=28 A 90 54	6 A 186, Bhola v. Gobind Dayal ... F... 2 A L J 450=A W N (1903) 165=28 A 21 292
3 A 857, Piari v. Khiali Ram... R... 9 O C 322 222	6 A 269=11 I A 37, Ram Kirpal v. Rup Kuari ... R... 3 C L J 240=10 C W N 209...811 F...
4 A 58, Pancham Singh Ali v. Ahmad... R... 4 C L J 79 904	3 L B R 181 314 R&F...
4 A 302, Lakh Raj Singh v. Dulhama Kuer ... Appr... 3 A L J 654=A W N (1906) 290 27	3 C L J 67=33 C 927 900
4 A 382, Sukhdeo Rai v. Sheo Ghulam... not F ... A W N (1906) 3=3 A L J 140= 28 A 278 215	6 A 292, Sharup Chand Mula v. Pat Dassee ... F... 124 P R 1906 317
5 A 142=9 I A 182, Rai Balkrishna v. Mussu- mat Masuma Bibi... D... 4 C L J 1 (P.C) =1 M L T 205=3 A L J 495=9 O C 188=8 Bom. L R 491=10 C W N 849 =16 M L J 292=28 A 570 134	6 A 406, Natha Singh v. Jodha Singh... R... 2 N L R 98 190
5 A 163, Narsingh Das v. Mangal Dubey... R... 3 L B R 191 218	6 A 488, Hafiz Ahmad v. Sobha Ram... R... 9 O C 153 372
5 A 268, Sukho Bibi v. Ram Sukh... R... 4 C L J 162=33 C 881 611	7 A 41, Hari Har Dut v. Sheo Prasad... F... A W N (1906), 177=3 A L J 798=28 A 691 763
5 A 289, Rudha Prasad Singh v. Bhagwan Rai ... Appr... A W N (1906), 130 695	7 A 182, Jawahra v. Akbar Hussain... R... 10 C W N 867=33 C 905 219
... .. v.	7 A 184, Gandharp Singh v. Sahib Singh... R... 3 A L J 641=A W N (1906), 240 761
... F... 3 A L J 460=28 A 622 935	7 A 345, Har Prasad v. Jafar Ali... R... U B R (1906), Limitation 7... .. 624
5 A 311 (F.B.), Jegat Narain v. Sheo Das... F... A W N (1906) 13=3 A L J 87=28 A 307 482	7 A 502=12 I A 12, (followed in 12 C 389), Ramadin v. Kalka Pershad (Miller v. Runga Nath Moulick)... D... 33 C 998 612
... .. F... 2 A L J 654=A W N (1905) 242=28 A 187 510	7 A 516, Bhavion v. Parmeshri Dfal... F... 3 A L J 621=A W N (1906), 214 881
5 A 316, Intizam Ali Khan v. Narain Singh ... R... 3 L B R 225 260	7 A 606, Jamait-un-nissa v. Lutf-un-nissa... R... A W N (1906), 44=3 A L J 171=28 A 365 810
... .. Declared to be no longer law... A W N (1905) 263=28 A 238 260	7 A 817, Imdad Ali Khan v. The Collector of Farakhabad ... D... 4 C L J 256 ...95 R...
5 A 338, Dayanand v. Bakhtawar Singh, Deci- sion of OLDFIELD, J... approved... 33 C 11 370	115 P. R. 1906 58
5 A 430, Jogul Kishore v. Shib Sahai ... R... 2 N L R 52 490	7 A 899, Bradley v. Atkinson... R... 16 M L J 533 925 & 926
5 A 490, Ramnagar Pandey v. Baghubar Jati ... Refd. to... A W N (1905) 176=2 A L J 507=28 A 30 54	8 A 102, Karim Bakhsh Khan v. Phula Bibi ... R... A W N (1906) 308 765
5 A 509, Deo Kishen v. Budh Brakush ... F... A W N (1905) 265=3 A L J 4=28 A 24* 482	8 A 149, Abdul Kadir v. Salima... F... 7 Bom L R 684=30 B 122 649
6 A 116, Ramphal Rai v. Tula Kuari ... R... A W N (1906) 272=3 A L J 755 516	8 A 185, Dip Narai Rai v. Dipan Rai... R... 29 M 491 689
6 A 148, Secretary of State v. Jagan Prasad ... D... 7 Bom L R 735=30 B 197 826	8 A 189, Mahadeo Prasad v. Mathura... R... 9 O C 227 181
	8 A 324, Sita Ram v. Amir Begam... R... 9 O C 97 640
	8 A 639, Hardeo Das v. Zaman Khan... R... 125 P R 1906 301
	9 A 97, Bhagwan Sahai v. Bhagwan Din... R... 9 O C 373 619
	9 A 99, Bhagwan Sahai v. Bhagwan Sind... F... 34 P L R 1906 682

*This is a mistake for 28 A 247 in Col 482.

9 A 108, Jiwan Ali Beg v. Basa Mal... D ... 71 P R 1906 790	11 A 244, Shib Lal v. Bhagwan Das... Appr. & F ...1 M L T 432 842
9 A 340, Girraj v. Kazi Hamid... Refd. to ...3 C, L J 260 35	11 A 267, *Muhammad Sakimau Khan v. Muhammad Yar Khan... R ...48 P R 1906 (F. B.) = 104 P L R 1906 ... 759
... Refd. to ...A W N (1905), 176 = 2 A L J 507 = 28 A 30... 54	11 A 310, Radha v. Kinlock... F ...2 N L R 42 356
9 A 407, Narain Kuar v. Chandy Din... R ...9 O C 239 464	11 A 321, Girdharee Lall v. Kantoo Lall... Refd. to ...2 A L J 647 = A W N (1905) 248 ... 28 A 192 489
9 A 486, Gobind Prasad v. Chandar Sekhar ... Cited and F ...10 P R 1906 ... 349	11 A 330, Har Saran Das v. Nandi... F ...3 A L J 719 = A W N (1906), 299 ... 13
9 A 493, Jamma v. Nain Sukh... considered ... 3 A L J 274 = A W N (1906) 117 = 28 A 508 476	11 A 340, Itup Chand v. Shamsul Jehan ... Dis ... 48 P R 1906 (F. B.) = 104 P L R 1906 759
9 A 513, Ram Prasad v. Abdul Karim... F ... A W N (1905), 190 = 2 A L J 482 = 28 A 60 750	11 A 378, Khairati Lal v. The Secretary of State for India in Council... R ...9 O C 311 (B) 57
9 A 613, Mata Din v. Ganga Bai... R ...9 O C 65 745	11 A 486, Raj Singh v. Parmanand... R A W N (1906) 14 = 3 A L J 17 = 28 A 365 810
10 A 8, Naurang Singh v. Sadopal Singh ... overruled ...A W N (1906) 64 = 3 A L J 168 = 28 A 408 287	11 A 633, Gobardhan Das v. Gokal Das... Dis ... 50 P R 1906 692
10 A 20, Kalka Prasad v. Chandan Singh... R ... 144 P R 1906 36	11 A 792, Gulzari Lal v. Jadann Rai... F ...71 P L R 1906 = 55 P. R. 1906 ... 545
10 A 264, Debi Din v. Chumna Lal... F ...16 M L J 475 = 1 M L T 348 = 29 M 529 ... 625	12 A 46, Lachho v. Har Sahai... R ...U B R (1905) Evidence 7 440
10 A 272, Sarjat Kuari v. Deoraj... R ...1 M L T 287 = 29 M 484 = 16 M L J 499 ... 481	12 A 51 = 16 I A 186, Sundar v. Parbati... R ...33 C 1079 516
... R ... 16 M L J 339 = 1 M L T 272 = 29 M 453 480	... R ...9 O C 161 740
10 A 358 (387), Gokal Prasad v. Radho... com- mented on ...3 A L J 670 A W N (1906), 213 421	...Sundar v. Parbati... R ...A W N (1906) 264 = 3 A L J 775 741
10 A 411, Ram Narain v. Bisheshar Prasad... F 3 A L J 644 = A W N (1906), 242... 816	...Sundar v. Parbati... D ...A W N (1906) 264 = 3 A L J 775 741
10 A 421, Mul Ghand v. Madho Ram... R ...U B R (1906), Evidence 13 435	12 A 57, Munro v. The Cawnpore Municipal Board... F ...A W N (1906) 21 = 28 A 310 = 3 A L J 838 376
10 A 495, Kanhia Lal v. Mahin Lal... R ...9 O C 119 (B) 520 and 521	12 A 64, Chatter v. Nawal Singh... F ...A W N (1906), 54 = 3 A L J 19 = 28 A 387 629
10 A 553, Tota v. Sardul Singh... R ...2 N L R 110 466	12 A 96, Sant Lal v. Umrao-un-nisa ... F ...9 O C 289 766
10 A 587, Ramjiwan Mal v. Chand Mal... F ... 24 P L R 1906 302	12 A 110, Ibin Husain v. Ram Dei... R ...9 O C 259 (B) 894
10 A 611, Girdhari Lal v. Bhola Nath... R ...3 A L J 435 706	12 A 129, Balkaran Rai v. Gobind Nath Tiwari ... F ...A W N (1906) 310 = 28 A 310 = 3 A L J 838 376
11 A 1, Rahim Bukhsh v. Muhammad Hassan, ... R ...23 P R 1906 = 107 P L R 1906 755	12 A 169, Razi-ud-din v. Karim Bakhsh... R ... 3 A L J 579 (F. B.) = A W N (1906) 285 = 1 M L T 242 30
11 A 49, Basu Kuar v. Dhum Singh... Appl. ... 3 A L J 228 = A W N (1906), 88... 608	12 A 313, Seth Chand Mal v. Durga Dei... R ... A W N (1906) 158 = 3 A L J 565 = 28 A 644 212
11 A 148, Balkishan v. Kishanlal... R ...10 C W N 984 = 4 C L J 149 = 33 C 1101... 818	... F ... A W N (1905) 180 = 28 A 51 ... 240
11 A 241 (P. C.), Skinner v. Orde... D ...78 P R 1906 = 150 P L R 1906 586	

TABLE OF CASES, OVER-ruLED, FOLLOWED, &c.

12 A 313, Seth Chand Mal v. Durga Dei ... F...	13 A 492, Mata Din Kasodhan v. Kazim Husain 3 A L J 848 ... 911
3 A L J 370 = A W N (1906) 157 ... 244	13 A 537, Wali Ahmad Khan v. Ajudhia Kandu ... R... A W N (1906), 204 = 3 A L J 775 ... 741
12 A 399 (F. B.) Sugan Singh v. Hira Singh ... F... 34 P L R 1906 ... 682	14 A 1, Ashfaq Ahmed v. Wazir Ali... Diss... 9 O C 91 (B) ... 919
12 A 426, Safdar Ali v. Dost Muhammad... F... A W N (1905) 219 = 2 A L J 612 = 28 A 124 ... 750	14 A 141, Muhammad Zahur v. Choda Lal... F... 33 C 386 = 10 C W N 501 ... 28
12 A 440, Sheo Prasad v. Hiralal... R... 11 C W N 163 ... 448	14 A 145, Kadir Bakhsh v. Bhawani Prasad ... R... 3 L B R 172 ... 271
12 A 510, Rameshar Singh v. Sheodin Singh F... A W N (1906) 28 = 3 A L J 40... 124	14 A 193, Jafar Husain v. Mashuq Ali... R... 3 A L J 567 = A W N (1906), 284 = 28 A 760 ... 40
1 M L T 268 (F.B.) = 16 M L J 479. ... 290	14 A 226, Naim-ullah Khan v. Ihsan-ullah Khan... F... A W N (1905), 218 = 28 A 183 ... 560
9 O C 80 ... 303	14 A 343, Ram Manohar Misra v. Lal Behari Misra... R... 2 N L R 81 ... 266
13 A 28 (44), Kishan Lal v. Ganga Ram... R... 4 C L J 216 = 33 C 385 ... 924	14 A 513, Musahab Zaman Khair v. Inayat-ullah... R... 4 C L J 246 ... 682
13 A 89, Abdul Majid v. Muhammad Faizullah D... 190 P L R 1935 = 1 P R 1906. ... 790	... R... A W N (1906), 44 = 3 A L J 171 = 28 A 365 ... 810
13 A 94, Pirthu Narain Singh v. Sita Ram... R... 9 O C 153 ... 372	15 A 14, In the matter of the petition of Si -a ram Kesho... F... A W N (1906), 55 = 3 A L J 165 = 28 A 391 ... 590
29 M 367 = 16 M L J 287 ... 373	15 A 84, Dhonkal Singh v. Phakkar Singh... R... 9 O C 288 ... 229
13 A 278, Oudh Behari Lal v. Nageshar Lal... R... 2 A L J 640 = A W N (1905) 241 = 28 A 193 ... 911	15 A 219, Khiali Ram v. Nathu Lal... R... A W N (1906) 28 = 3 A L J 40 ... 124
13 A 300, Har Narain Singh v. Bhagwant Kuar... F... 2 N L R 81 ... 286	... R... 3 A L J 731 = A W N (1906), 300 ... 711
13 A 300 = 18 I A 55, Raja Har Narain Singh v. Chaudhrai Bhagwant Kuar... R... 33 C 498 ... 287	15 A 304, Bhagwati Prasad v. Radha Kishen Sewak Pande... D... 4 C L J 219 = 33 C 985 ... 88
13 A 300, Raja Har Narain Singh v. Chaudhrai Bhagwant... R... 2 N L R 121 ... 783	15 A 327, Phundo v. Jaugi Nath... R... 9 Q. C. 243 (B)... 210
13 A 305, Bishnath Prasad v. Jagannath Prasad ... F... 78 P R 1906 = 150 P L R 1906 ... 586	15 A 357 (P.C), Raja Mokhim Singh and others v. Rup Singh and others... R... 26 P R 1906 = 20 P L R 1906 ... 345
13 A 309, Nasratullah v. Mujibullah ... F... 10 C W N 839... 211	15 A 373, Gauri Dutt v. Parsotham Das... F... A W N (1905), 218 = 28 A 183 ... 580
... R... 3 A L J 379 = A W N (1906) 142 = 28 A 627 ... 228	15 A 405, Guise v. Jaisraj... Refd. to... A W N (1905) 191 = 2 A L J 749 = 28 A 72... 247
13 A 356, Durga Dei v. Bhagwat Prasad... Dist ... 4 C L J 141 = 33 C 867 ... 681	16 A 3, Raghubar Dial v. Madam Mohan... R... 4 C L J 162 = 33 C 881 ... 611
... R... A W N (1906), 44 = 3 A L J 171 = 28 A 365 ... 810	16 A 59, Kubra Bibi v. Wajid Khan... Quoad hoc over-ruled... A W N (1906), 309 ... 706
* 13 A 412, Mata Din Kasodhan v. Kazim Husain... R... 7 Bom L R 311 = 30 B 156 ... 371	16 A 259, Fateh Chand v. Muhammad Baksh not F... 29 M 77 ... 49
13 A 432, Mata Din Kasodhan v. Kazim Husain ... Refd. to... 7 Bom L R 311 = 30 B 156 ... 221	16 A 279, Ganeshi Lal v. Khairati Singh... R... 9 O C 326 ... 222
... Diss... 3 C L J 205 = 33 C 425 ... 905	... R... 9 O C 339... 821

* This is a mistake for 13 A 432

16 A 286, Madho Das v. Ramji Pattak...F...3 A L J 511=A W N (1906) 195 ... 372	18 A 19, Shoonath Singh v Ram Din ...R... 9 O C 80 ... 308
16 A 328, Naunihal Bhagat v. Rameshar Bhagat...R... A W N (1906) 174 424 & 425	18 A 31, Muhammad Husein Ali v. Thakur Dha- ram...R...4 C L J 246 ... 446
16 A 344, Begum v. Mahammad Yakub ...disapproved...1 M L T 153 (F.B.)= 29 M 895=16 M L J 895 ... 890	18 A 42, East India Railway Company v. Bun- yad Ali...F...2 N L R 125 ... 56
16 A 371, Shankar Prasad v. Jalpa Prasad ...Distd...A W N (1905), 268=28 A 249 ... 445	18 A 46 (49), Ram Narayan Singh v. Babu Singh...R...3 A L J 654=A W N (1906) 280 ... 27
16 A 412, Dakhmi Din v. Rahim-un-nissa...F... A W N (1905), 219=2 A L J 612=28 A J 24 ... 750	18 A 49, Ram Newaz v. Ram Charan...Diss... 11 C W N 163 ... 448
2 A L J 788=A W N (1905) 264=28 A 246 ... 751	18 A 113, Ganga Prasad v. Chunni Lal...F...9 O C 233 ... 681
16 A 449, Lachmi Narain v. Kunji Lal ...D... A W N (1906) 10=3 A L J 127 ... 488	18A141, Shirin Begam v. Agha Ali Khan...F.. A W N (1906) 3=3 A L J 140=28 A 273 ... 245
3 A L J 668=A W N (1906) 281... 493	18 A 160, Amanat Bibi v. Ajudhia...R...2 N L R 174 ... 613
*17 A 17, Hamida Bibi v. Ali Husen Khan...D... 21 T L R 191 ... 322	18 A 223, Jaggarnath Pande v. Jokhen Tewari ...F...48 P R 1906 (F.B.)=104 P L R 1906 ... 759
17 A 21, Amrit Ram v. Daxrat Ram ...R... A W N (1906) 136=28 A 621 ... 293	18 A 223, Jaggarnath Pande v. Jokhu Towar' ...R...A W N (1906), 198=3 A L J 804 =28 A 676 ... 768
17 A 29 (31), Durga Dihal Das v. Anoraji...R... 3 C L J 67=38 C 927 ... 300	18 A 227, Shooratan Kunwari v. Ram Pargash ...Appr...A W N (1906) 173=28 A 689 ... 501
17 A 45, Haidri Begam v. Nathu ...R... 3 C L J 274=33 C 329 ... 847	18 A 260, Kanhaiya Lal v. Pancharam...R...2 N L R 123 ... 522
17 A 63, Lachmi Narain v. Muhaniad Yusuf ...R...A W N (1905) 225=28 A 155 ... 898	18 A 320, Rakchedi Bhagat v. Nakehedi Misr ...R...2 N L R 92 ... 717 & 718
17 A 69, Dwarka Das v. Kameshar Prasad...R... 2 N L R 87 ... 258	18 A 332, Mihin Mal v. Imtiaz Ali ...D...69 P R 1906=118 P L R 1906 ... 492
17 A 87, Kuar Sen v. Mamman ...F... A W N (1906) 80=28 A 434 ... 748	18 A 344 (347) Lachmi Narain v. Jyala Nath ...R...29 M 84=16 M L J 50 ... 909
17 A 172, Hamidu Bibi v. Ali Husen Khan ...F...2 N L R 7 ... 278	18 A 354, Badhri Prasad v. Shicodhian...R...2 N L R 170... 729
17 A 274, Ambika Dat v. Ram Udit...Refd. to ... A W N (1906) 54=3 A L J 123 ... 223	18 A 373, Nizamuddin v. Anandi...Refd.to...3 C L J 260 ... 35
17 A 511 (P.C.) Chappal Das v. Brij Bhukan Lal...F...2 N L R 102 (P.C.) ... 606	18 A 419, Ramdas v. The Secretary of State ...R...10 C W N 857=33 C 1040 ... 279 & 280
17 A 531, Kalavati v. Chedi Lal...R...3 C L J 119 ... 284	18 A 422, Ibrahim Ali v. Mohsin Ali...R...2 N L R 81 ... 286
9 O C 322 ... 222	18 A 455, Chiranjil Lal v. Tharm Singh...F.. 48 P R 1906 (F.B.)=104 P L R 1906...79
17 A 538, Mewa Kuar v. Bankari Prasad...R... 9 O C 224 ... 221	18 A 478, Gunjra Kuar v. Ablakh Pando ...R... 4 C L J 181=8 Bom L R 705=30 B 523=1 M L T 301 (F.C.) ... 544
9 O C 322 ... 222	19 A 16, Mathura Das v. Bhikhan Mal...R...3, A L J 415 (P.C.)=10 C W N 780=8 Bom L R 402=3 C L J 594=1 M L T 171=28 A 488 ... 469

† This is mistake for 17 A 172

* In Col 890, this is wrongly printed as 18 A C 9.

19 A 16, Marhura Das v. Bhikhan Mal ... R ... 9 O C 119 (B) ... 520 & 521	20 A 345, Haji Syed Muhammad v. Gulab Rai ... Distd ...2 N L R 4 ... 529
19 A 39 (P.C.) Mathura Das v. Raja Narendar Bahadur... F ...2 N L R 162 (P.C.) ... 696	20 A 354, Harjas Rai v. Rameshar... F ... A W N (1905), 168=28 A 28... 912
19 A 133, Janki v. Bhairon... R ...9 O C 119 (B) ... 520 & 521	20 A 362, Narain Singh v. Chaturbhuj Singh... F ... A W N (1905) 280=2 A L J 839 (F.B.) 28 A 270 ... 374
19 A 136, Bhagwati Prasad v. Jamna Prasad ... D ... A W N (1906) 43=3 A L J 110= 28 A 397 ... 312	20 A 365, Debi Das v. Nirpal... cited & F . 10 P R 1906 ... 349
19 A 140, Bashiruddin v. Jhori Singh... R ...9 O C 214 (B) ... 261	20 A 392, Nand Kishore Lal v. Suraj Prasad ... R ...10 CWN 717=33 C 584=4 C L J 340 ... 879
19 A 174, Amolok Ram v. Luchmi Narain... F ... 3 C L J 188 ... 329	20 A 412 (P.C.) Sandat Khan v. Phul Khan... R ...132 P R 1906 ... 258 & 259
19 A 160, Ram Lal v. Tulsa Kuar... R ...2 N L R 137 ... 918	20 A 438, Bansidhar v. Dip Singh... F ... A L J 639= A W N (1906) 257 ... 572
19 A 209, Raja Ram Singhji v. Chunni Lal... F ... A W N (1905), 165=28 A 28 ... 912	20 A 476, Ranjit v. Radha Rani... F ... A L J 729= A W N (1906), 299 ... 13
19 A 339, The Crown Brewery v. The Collector of Dehra Dun... R ...115 P R 1906 ... 58	20 A 539, Sheornaj Singh v. Amin-ud-din Khan ... D ... A W N (1906) 133=3 A L J 428=28 A 613 ... 238
... D ...4 C L J 256 ... 59	21 A 4, Jafar Husen v. Ranjit Singh... D ... A W N (1905), 226 28 A 157 ... 694
19 A 480, Sanwal Das v. Bismillah Begam... F ... 16 M L J 545 ... V	21 A 26, Fadubar Singh v. Sheo Sarn Singh ... R ...U B R (1906), Tort 5 ... 663
19 A 499, Mangli Prasad v. Debi Din... R ...3 A L J 504= A W N (1906) 213=28 A 722 ... 242	21 A 133, The Secretary of State for India in Council v. Jillo... Refd. to ... A W N (1905) 191=2 A L J 749=28 A 72 ... 247
19 A 504, Yasinkhan v. Muhammad Yar Khan ... F ...16 M L J 413=29 M 508...887	21 A 140, Harbans Lal v. Kundon Lal... R ...9 O C 289 ... 766
20 A 2, Nabhu Khan v. Sita... F ...3 L B R 169 ... 285	21 A 196, Sibta Kunwar v. Bhagoli... R ...8 Bom, L R 873 ... 265
20 A 98, Aman Singh v. Narain Singh... Doubt- ed ...3 C L J 119 ... 284	21 A 277, Liladhar v. Chaturbhuj... F ...16 M L J 545 ... V
20 A 100, ... R ... 3 A L J 544= A W N (1906) 215 ... 935 & 936 ... R ... 2 N L R 150 ... 766	21 A 297, Kausalia v. Gulab Khan... R ...3 A L J 385= A W N (1906), 140 ... 552
20 A 126, Queen Empress v. Beer... D ...21 T L R 191 ... 322	21 A 301, Dharam Singh v. Angan Lal... R ...9 O C 350 ... 615
20 A 139, Sadiq Husain v. Lalta Prasad... D ... A W N (1906) 43=3 A L J 110=28 A 337 ... 312	21 A 309, Muhammad Hamid-ud-din v. Shib Sabai... R ...2 N L R 106 ... 445
20 A 148, Muhammad Yusuf Ali Khan v. Dal Kuar... F ... A W N (1906) 73=3 A L J 191=28 A 424 ... 600	21 A 316, Beni Prasad Kunwar v. Mukhtesar Rai... F ...2 N L R 34 ... 429
20 A 171, Bindesri Naik v. Ganga Saran Sahi ... R ... A W N (1905) 195=2 A L J 564 =28 A 78 ... 786	21 A 354, Sheo Rattan Rai v. Mohri... F ...53 P R 1906=103 P L R 1906 ... 66
*20 A 277, Madan Lal v. Kishan Das... over- ruled ... A W N (1905) 280=2 A L J 839 (F.B.)=28 A 270 ... 374	21 A 374, Janki Pershad v. Ishar Doss... R ...2 N L R 450 ... 766
* This is mistake for A W N (1905), 277.	21 A 380, Yad Ram v. Umrao Singh... F ... A W N (1905) 173=2 A L J 702=28 A 44 ... 330
	21 A 408, Parsotam Saran v. Sanhi Lal ... Disc and doubted ... A W N (1905), 250=28 A 196 ... 885
	21 A 425, Ram Dayal v. Madan Mohan Lal... F 2 N L R 91 ... 819

21 A 441, Ram Gopal v. Piari Lal...R... 2 N L R 150 ... 766	22 A 398, Bansidhar v. Ganeshi ...R... 20 P R 1906=69 P L R 1906, ... 482
21 A 453, Ram Sarup v. Ghansani...Dis... 4 C L J 141=33 C 867 ... 681	... ..dissenting from... AWN (1906) 19=3 A L J 87=28 A 307 ... 482
21 A 454, Harlal v. Muhamadi...F... 9 O C 284 610	... ..doubted... 2 A L J 654=A W N (1905) 242=28 A 187 ... 510
21 A 496=26 I A 58, Lala Beniram v. Kundun Lal...R... 19 C W N 765=33 C 1149 ... 474	22 A 366, Sheo Singh v. Dewan Singh ...R... 9 O C 80 ... 903
* 21 A 596 (P.C.), Beni Ram v. Kundan Lal...F ... 4 C L J 198 ... 935	22 A 404, Badri Das v. Inayat Khan ...R... 3 A L J 445=28 A 660 ... 914
22 A 1, Dalganjan Singh v. Kalka Singh...R... 2 A L J 883 A W N (1906), 2 ... 751	22 A 430, Hem Kunwar v. Amba Prasad...Distd ... 33 C 580 ... 273
... ..D... A W N (1906) 134=28 A 614 ... 757	... ..R... 3 L B R 168 ... 274
28 A 286... ... 764	22 A 453 (461), Mahid-un-nissa v. Gobardhan Das...R... 29 M 491 ... 689
22 A 19, Zahir Hasan v. Sundar...F... 9 O C 269 (B) ... 590	23 A 32, Chatar Singh v. Kalyan Singh...F... A W N (1906), 72=3 A L J 179 ... 749
22 A 33 (F.B.), Bhagwanta v. Sukhi...Distd... 2 P L R 1906 ... 382	23 A 56, Dobi Prasad v. Janna Das...Appr... 2 N L R 54 ... 310
† 22 A 49=2 Bom L R 523, Balkishen Das v. W F Legge...R... 8 Bom L R 764 ... 686	23 A 93, Kallu v. Mami...Distd... A W N (1905) 200 2 A L J 667=28 A 95 ... 238
22 A 55, Basdeo v. John Smidt...F... A W N (1905) 263=28 A 244 ... 239	23 A 167, Habib Baksh v. Baldeo Prasad...F... 1 M L T 268 (F. B.) 16 M L J 479 ... 230
§ 22 A 140, Harbans Lal v. Kundan Lal...R... 132 P R 1906... ... 258 & 259	... ..D... 69 P R 1906 118 P L R 1906 ... 492
22 A 141, Kanhia Lal v. Dehidas...F... 4 C L J 56 ... 492	23 A 181 Maharaja of Bhartpur v. Rani Kanno Dei...R... 29 M 170=16 M L J 133 ... 706
22 A 149=27 I A 58=2 Bom L R 523, Balkishen Das v. W F Legge...Refd. to... 7 Bom L R 669=30 B 119 ... 434	23 A 206, Narsingh Misra v. Lalji Misra...F... 3 A L J 274= A W N (1906), 117=28 A 508 ... 615
... ..R... 8 Bom L R 553=30 B 426 ... 438	... ..R... 9 O C 350 ... 615
... ..R... 3 L B R 227 ... 439	23 A 216, Lechmi Narain v. Janki Das...F... A W N (1905) 174=28 A 50 ... 499
... ..R... 8 Bom L R 761 ... 687	23 A 247, Narain Singh v. Parbat Singh...R... 2 N L R 150 ... 766
22 A 284, Bisheshwar Dayal v. Ram Sarup...D... A W N (1906) 208=3 A L J 791... 715	23 A 277, Beni Prasad Kuari v. Dharuka Rai ...F... A W N (1905) 175=2 A L J 714=28 A 48 ... 798
... ..v. Ram Sarup ...R... 4 O C 259 (B) ... 894	23 A 285, Sheo Narain v. Beni Madho...R and F... 4 C L J 162=33 C 881 ... 611
... ..F... 4 C L J 317 ... 903	23 A 309, Thakur Singh v. Nokhe Singh...R ... 9 O C 119 (B) ... 520 & 521
22 A 326, Ram Kunwar v. Ram Dai ...Appr... 10 C W N 1074=4 C L J 476... 494	23 A 331 Chunnilal v. Abdul Ali Khan...R & F... 3 A L J 675=A W N (1906) 283 ... 887
... ..relled on... 10 C W N 1074=4 C L J 476 ... 494	... ..R... 2 N L R 178 ... 91
	23 A 333, Jafri Begam v. Syed Ali Raza...R... 33 C 498 ... 287

*This is a mistake for 21 A 496.

†This is a mistake for 22 A 199

‡This is a mistake for 22 A 149.

§This is a mistake for 21 A 140.

23 A 883=28 I A 111, Jafri Begam v. Syed Ali Raza...R...4 C L J 162 38 C 881...612	24 A 479, Debi Prasad v. Jai Karan Singh...R... 2 N L R 187 918
23 A 423, Muhammad Ahmad v. Muhammad Siraj-ud din...F...A W N (1906) 21= 28 A 810=3 A L 5 888 376	24 A 504, Ranjit Singh v. Naubat...F...2 N L R 42 856
23 A 465, Ramsaran v. Chhatar Singh...F... A W N (1906) 10=28 A 800=3 A L J 836 ... 627	24 A 541, Parmanand v. Daulat Ram...R...1 C L R 1906 921
23 A 502, Ganga Prasad v. Ram Dayal...R...A W N (1906) 185=3 A L J 800 '... 6	25 A 1 (P. C.) Rampal Singh v. Balbhaddar Singh...R...9 O C, 292 741, 742
24 A 17, Basul Begam v. Munsur Ali Khan...F... A W N (1906) 78=3 A L J 191=28 A 424 600	25 A 46, Ajudhia Prasad v. Man Singh...F...38 C 1212 ... 660
24 A 94 (P. C.), Bahadur Singh v. Mohar Singh ... Dist...2 P L R 1906 ... 882	25 A 59, Tejpal v. Ganga...Refd. to...3 C L J 260 ... 35
...F...29 M 120 ... 881	25 A 79, Sheo Prasad v. Bihari Lal...R...2 A L J 680 (F.B.)=A W N (1905) 244= 28 A 174 ... 906
21 A 157, Govind Prasad v. Mohan Lal...R...3A L J 424=A W N (1905) 184 ... 156	...Dis... 10 C W N 862=38 C 890 ... 915
... Dist ... A W N (1906) 264=3 A L J 775 741	A W N (1905), 165=2 A L J 413=28 A 19 ... 916
... R ... A W N (1906) 264=3 A L J 775 ... 741	...Appl... 3 A L J 465=A W N (1906) 203=28 A 674 ... 916
21 A 160, Bhartipore State v. Gopal Dei...relied ... on 10 C W N 1074=4 C L J 476...494	25 A 185, Ram Lal v. Kabul Singh...R...1 M L T 414 ... 851
21 A 226, Biri Singh v. Nawal Singh...F...29 M 302 ... 540	25 A 214, The Principle of Debi Singh v. Jai Ram ...Appl... 2 A L J 647=A W N (1905) 248=28 A 182 ... 489
21 A 282, Sheoraj Singh v. Kameshar Nath ...R...47 P R 1906 ... 278	25 A 220, Raghubar Dayal v. Jwala Singh ...Refd. to...A W N (1906) 54=3 A L J 128 ... 228
...F...A W N (1906) 70=3 A L J 198 ... 809	25 A 231, Salig Ram v. Muradan...R...2 N L R 187 ... 918
...D...3 C L J 240=10 C W N 209 ... 811	25 A 236 (P.C.), Baqar Ali Khan v. Anjuman Ara Begam...R...38 C 858 ... 654
21 A 302, Sakina v. Gauri Sahai...R...8 Bom L R 757=30 B 623 ... 228	...R... 2 N L R 158 ... 656
...F...2 N L R 63 ... 846	25 A 280, Tasadduq Husain v. Hayat-un-nissa ...R... 2 N L R 179 VI
24 A 319, Deo Narain Rai v. Kukur Bind ...R and F...4 C L J 41=38 C 861 ... 897	25 A 337, Shamsul Jahan Begam v. Ahmad Wali Khan...R...U B R (1906) Evidence, 13 ... 435
24 A 361, Sri Nath Sahai v. Ram Ratan Lal ...R...9 O C 254 ... 306	25 A 351, Surajmani v. Rabi Nath...R...9 O C 119 (B) ... 520 & 521
24 A 420, Drig Bijai Singh v. The Deputy Commissioner of Gonda...R...110 P L R 1906 140	25 A 378, Anant Ram v. Channu Lal...D...6 P R 1906=118 P L R 1906 ... 492
24 A 429 (P. C.), Sri Gopal v. Pirthi Singh...R... 21 T L R 256 ... 196	25 A 407, Gharibullah v. Khalak Singh...F... 165 P L R 1906 ... VII
24 A 459, Debi Datt v. Jadu Rai...considered...3 A L J 274=A W N (1906) 117= 28 A 508 ... 476	25 A 407=30 I A 165 (P. C.)...F...3 C L J 12 ... 487
...Dis... 1 M L T 28=16 M L J 69=29 M 200 ... 489	25 A 421, Bhugwan Das v. Mohan Lal...D...A W N (1906) 164=3 A L J 246=28 A 642 ... 774
24 A 464, Gulab Kunwar v. Thakur Das...R...3 N E R 179 ... VI	...R...3 A L J 794=A W N (1906) 818... 765

TABLE OF CASES, OVER-RULED, FOLLOWED, &c.

1111

25 A 425, Jhampan Kunwar v. Tiloki...R...	621
• 90 P R 1906 ...	621
25 A 441, Saran v. Bhagwan...Appr...	
A W N (1906) 171=3 A L J 556=28 A	
655 ...	246 & 247
25 A 468, Sheo Shankar Lal v. Debi Sahai	
...Refd. to...7 Bom L R 986=80 B	
229	510
25 A 476, Shoo Partab Bahadur Singh v. The	
Allahabad Bank...Refd. to...7 Bom L	
R 986=80 B 229 ...	510
25 A 509, Alston v. Pitamber Dac...R...49 P	
R 1906 (F.B.)=106 P L R 1906...	184
25 A 580, Mangal Sen v. Shankar Sahai...D...3	
C L J 363=10 C W N 788=33 C	
812 ...	162
26 A 10, Lachman Singh v. Ram Lagan Singh	
...F...29 M 1 ...	515
26 A 49, Kusumri v. Beni Prasad...F... 94 P	
L R 1906	692
26 A 22, Majidan v. Ram Narain...F...4 C L J	
485=11 C W N 71 ...	641, 642
...R...9 O C	
97 ...	649
...R...4 C L	
J 578 ...	649
26 A 78, Brij Mohan Das v. Algu...R...A W N	
(1906) 28=3 A L J 40 ...	124
...R...3 A L J	
731=A W N (1906) 900 ...	711
26 A 91, Barhma Din v. Baji Lal...R...3 A L	
J 585 (F.B.)=A W N (1906) 296=1 M	
L T 247=28 A 771 ...	253, 254
26 A 178, Parsotam Narain v. Taley Singh...R	
...9 O C 315 ...	777
26 A 205, Kartic Ram v. Babu Lal...Distd... 2	
C L J 158=10 C W N 601 ...	290
...R... 9 O	
C. 205(B) ...	290
...F...	
2 A L J 450=A W N (1905) 165=28 A	
21 ...	292
26 A 207, Bombay, Baroda and Central India	
Railway Company v. Santi Lal...F...	
A W N (1906) 101...3 A L J 329=28 A	
552 ...	56
26 A 220, Muhammad Saddik Ahmad v. Panna	
Lal...R...9 O C 275 ...	281
26 A 227, Bhagwan Das v. Har Din...F...A W	
N (1906), 216=28 A 743 ...	309
26 A 318, Tamman Singh v. Lachman Kunwari	
...F...A W N (1906) 18=3 A L J 40=	
28 A 252 ...	35
26 A 329, Girwar Lal v. Lakshmi Narain...R...	
3 L B R 104 ...	280

26 A 331, Moti Ram v. Honnu Prasad...F...A	
W N (1906) 16=3 A L J 49=28 A	
252 ...	85
...F...	
94 P R 1906=93 P L R 1906 ...	250
26 A 342, Kanta Prasad v. Sheogopal...Refd to...	
3 C L J 260	35
26 A 389, Ram Hit Singh v. Narian Rai...R...	
2 N L R 150	766
27 A 407, Ibu Hasain v. Birjbhukan Saran...R...	
J C, C 259 (B)	894
...R...	
4 C L J 79 ...	904
* 26 A 417, Gulzari Lal v. Madho Ram . .F...A	
W N (1906) 43=3 A L J 110=28 A 397	
... ..	812
26 A 559, Sheo Shanker v. Parma Mahton...D...	
A W N (1906) 202=3 A L J 634=28 A	
712 ...	708
26 A 574 (P.C.), Munnu Lall v. Muhammad	
Ismail ...R... 110 P L R 1906	140
27 A 31, Khari Singh v. Pola Ram ...doubted	
A W N (1905) 213=2 A L J 661=28 A	
181 ...	121
...over-ruled	
...3 A L 7 569 (F.B.)=A W N (1906)	
223=28 A 753 ...	127
27 A 53, Sheo Dat v. Sheo Shankar Singh...R...	
8 Bom L R 777 ...	292
27 A 81, Nazir Hasan v. Shibba ...R... 3 A L J	
619=A W N (1906) 243 ...	563
27 A 82, Rannu Rai v. Rafi-ud-din ...R... 2 N L	
R 170 ...	729
27 A 84, Udit Upadhyia v. Bhawani Din...R...A	
W N (1906), 80=3 A L J 242=28 A	
486 ...	868
27 A 88, Jagar Nath Singh v. Jai Nath Singh	
...Refd to...A W N (1905), 233=28 A	
161 ...	542
27 A † 162, Balabai v. Ganesh...Refd. to...2 N L	
R 7 ...	273
27 A 169, Pahalwan Singh v. Ram Bharsos...D	
...A W N (1906), 264=3 A L T 775	
... ..	741
A W N (1906), 264=3 A L J 776	
... ..	741
27 A 271, Achal Ram v. Kazim Husain Khan	
...Refd. to...2 N L R 17 ...	8
27 A 325, Gopi Narain Khanna v. Bansidhar...	
R...20 M 491	689
27 A 364, Jamna Das v. Ramautar Pande...R...	
21 T L R 56	518

* This is a mistake for 26 A 447

† This, is a mistake for 27 B 162.

27 A 430, Tufail Fatma v. Bitola...R...3 A L J 630=A W N (1906), 290-28 A 778 804	2 B 489, Basawa v. Kalkapa...F...2 N L R 121 788 R...10, C W N 551=3 C L J 576-93 C 613 ... 787
27 A 400, Dhan Devi v. Zamarrad Begam...R... 2 N L R 87 ... 258	2 B 494, Lakshman Ramchandra Joshi v. Sathya Bhama Ipi...relied on...10 C W N 1074=4 C L J 476 ... 494
27 A 447, Nepal Rai v. Debi Prasad...F...29 M 367=16 M L J 287 ... 973	2 B 624, Sidlingupa v. Sidava...R...U B R (1905), Buddhist Law- Divorce 3 188
*27 A 484, Shyama Charan Mitter v. Deben- dra Nath Mukerjee...Refd. to...7 Bom L R 641=30 B 113 ... 318	3 B 174, Mohenlal Jechand v. Amratlal Be- chardas...F...16 M L J 281=29 M 511 582
27 A 485, Harnam Chandar v. Muhammed Yar Khan...Appr...A W N (1906) 171=3 A L J 556=28 A 655 ... 246 & 247	3 B 415=6 I A 114, Narayana Rao Ramchandra v. Ramabhai...F...4 C L J 74 ... 495
27 A 501, Shiam Sunder v. Muhammad Ihtis- ham Ali ...R...3 A L J 585 (F.B.)= A W N (1906) 236-1 M L T 247-28 A 771 ... 253	4 B 1, Harivalabdas v. Utamchand ...R...8 Bom L R 777 ... 292
27 A 511, Ram Jutan Rai v. Ramhit Singh...F... 9 O C 233 ... 681	4 B 126, Waman Ramchandra v. Dhondiba Krishnaji...D...71 P R 1906 ... 790
27 A 592, Radha Krishna Das v. The Municipal Board of Benares ...F...29 M 360...115	4 B 515, Parvatibai v. Vishvanath...R...8 Bom L R 885 ... 47 & 370
27 A 655, Ritraj Kunwar v. Sarfaraz Kunwar ...R...3 A L J 453-28 A 647 ... 160	5 B 80, Vasudeb v. Vamanji...F...2 C L J 530-32 C 1072-10 C W N 505 204 & 205
28 A 21, Basant Lal v. Kunji Lal ...R...9 O C 205 (B) ... 290	5 B 450, Sadashiv v. Dhakubai...Refd. to...3 C L J 260 ... 35
28 A 54, Komal Prasad v. Savitri Bibi...R...2 N L R 179 ... 722	5 B 506, Mitibhai v. Limji Nowroji Banaji ...Refd. to...7 Bom L R 988=30 B 359 ... 23
L. L. R. Bombay Series.	
1 B 7, Gunput Putaya v. The Collector of Canara...R...10 C W N 857=33 C 1040 279, 280	5 B 575, Jayherbai v. Haribhai...R...3 L B R 225 ... 260
1 B 19, Umiasankar Lakhmiram v. Chhotalal Vajeram...R...21 T L R 196 ... 584 F... 8 Bom L R 892 ... 631	5 B 647, Hajarimal v. Krishnarav...R...2 N L L R 42 ... 356
1 B 523, Ravji v. Dadaji...Refd. to...7 Bom L R 659=30 B 101 ... 25	6 B 54, Manjunath Badrabhat v. Venkatesh Govind Shambhog...R...47 P R 1906 278
—, Ravji Narayan Mandlik v. Dadaji Bapuji Desai...Refd. to...A W N (1905) 206=28 A 104 ... 26	6 B 100, Ramachandra v. Keshav ...F...2 A L J 626=A W N (1905) 221=28 A 135 221
1 B 584, Ananta v. Ramabai...relied on...4 C L J 323 ... 484	6 B 302, Matigovri v. Pranjeewan Dasa...R...16 M L J 462=1 M L T 426 ... 375
2 B 97, Satra Kumaji v. Visram Hasgavada ...not F...190 P L R 1905=1 P R 1906 790	6 B 804, Ranchodji v. Lallu...R...8 Bom L R 858 ... 589
2 B 133, Jannudas Shankarlal v. Atmaram Harjivan...R...33 C 633 ... 858	6 B 890, Ashabai v. Haji Tyeb Haji Rahimtulla ...disapproved...8 Bom L R 792...224
*† 2 B 273, Raju Balu v. Krishna Raju Ram- Chandra...Distd...21 T L R 199... 794	6 B 586, Vithal Janardan v. Vithojirav Put- tajirav...F...8 Bom L R 218=30 B 415 ... 104
2 B 388, Lallubhai Bapubhai v. Mankubhai ...R...10 C W N 802 (F.C.)=4 C L J 9 =8 Bom L R 446=3 A L J 484=1 M L T 211=30 B 431=16 M L J 446... 488	7 B 109, In re Permanandas Jeewandas...D... 3 C L J 59=33 C 54=10 C W N 425 671
	7 B 182, Ukha v. Daya...D...43 P R 1906=122 P L R 1906 ... 882
	7 B 217, Kalidas Kevaldas v. Nattu Bhagvan ...R...127 P R 1906 ... 349

* This is a mistake for 27 C 484

† This is a mistake for 2 B 273

7 B 272, Hari Narayan Brahma v. Ganpatrai
Daji...D...48 P R 1906=122 P L R
1906 ... 832.

7 B 287, Pandu v. Devji...R...8 Bom L R 842=
30 B 625 ... 315

7 B 289, Kacharbhajvaji v. Bai Rathore...R...
9 O C 326 ... 223

7 B 316, Ishwardas Jagjivandas v. Dosibai...F...
8 Bom L R 218=31 B 415 ... 104

7 B 323, Anandray Bhikaji Phadke v. Shankar
Daji Charya...R...16 M L J 471=1 M
L T 423 ... 205

7 B 332, Mahadaji v. Hari...R... 8 Bom L R
963 ... 106

7 B 341, Shiva v. Joma...Refd. to... 3 C L J 293
=33 C 487 ... 545

7 B 427, Madhuraia Kulharin v. Fakuaja
Kenard...D... 1 M L T 397=16 M L J
541 ... 603

7 D 431, Chogalal v. Trueman...Refd. to...7
Bom L R 659=30 B 101 ... 25

8 B 31, Lakshman v. Babaji...R...8 Bom L R
885 ... 47, 370

8 B 377, Devdas Jagjivan v. Prijada Begam...F
...8 Bom L R 218=30 B 415 ... 104

8 B 424, Lakshmi v. Krishnabhat...Appr...21
T L R 236 ... 321

9 B 20, Dhondo v. Govind...R...8 Bom L R 885
... 47 & 370

9 B 28, Dhondi Jagannath v. Collector of Salt
Revenue...F...24 P L R 1906 ... 302

9 B 50, Amarsi v. Dayal...R...160 P L R
1906 ... 78⁹

9 B 146, Shaik Ibrahim v. Shaik Suleman...F...
A W N (1905) 222=2 A L J 778=28 A
147 ... 645 ...

10 B 41, Umarmkhan v. Mahomed Khan...Diss
...29 M 367=16 M L J 287 ... 373

10 B 65, Kasturshet v. Rama...Refd. to...7
Bom. L R 659=30 B 101 ... 25

10 B 220, Bhikaji Ramachandra v. Purshotam
...R...9 O C 354 ... 272

10 B 223, Bhikaji Ramachandra v. Purshotam
...F...21 T L R 191 ... 322

10 B 238, Narayan Raghunath v. Bhagvant
Anant...F...29 M 172 ... 369

10 B 372, Bai Devkori v. Amritram...R...9 O C
230 ... 494

10 B 381, Halimbhai Karimbhai v. Shankar
Sai...F...A W N (1906) 51=3 A L J
185 ... 287

10 B 435, Shitkuli Timapa Hegda v. Mahabliya
...R...8 Bom. L R 812 (F.B.)=1 M L T
370 ... 276

10 B 478, L W J Rivett-Carnes v. Jivibai...R
...21 T L R 56 ... 518

10 B 663, Balkrishna Gopal v. Bal Joshi Sada-
shiv Joshi...F...16 M L J 475=1 M
L T 348=29 M 523 ... 625

11 B 1 (4), Jehangir Dhanjibhai Surti v.
Perazbai...Refd. to...7 Bom L R 988=
30 B 359... 23

11 B 69, Lakshmbai v. Hirabai...R...9 O C 119
(B)... 520 & 521

11 B 172, Daulat v. Bhukandas Manekchand
...R...48 P R 1906 (F.B.)...104 P L
R 1906 ... 759

11 B 257, Pragdas v. Dowlatram...R...30 B
107 ... 575 & 576

11 B 429, Shivaji Yesaji Chawan v. The Collect-
or of Ratnagiri...F...33 C 693 ... 600

11 B 467, Shankar Bisto Nadgir v. Narsingh Rao
Ramchandra...R...8 Bom L R 955
... 69

11 B 475, Sawaba Khandapa v. Abaji Jotirav...
R...2 N L R 174 ... 613

11 B 566, Kessowji v. Hunjivan...F...9 P R 1906
=19 P L R 1906 ... 344
=A W N (1906) 212=28 A 718 ... 477

11 B 573, Hirabai v. Lakshmbai...R...21 T L R
56 ... 518

11 B 708, Chinvirappa v. Puttappa...cited &
F...3 P R 1906=109 P L R 1906
... 185

12 B 7, Moti Vahu v. Vinayak Veerchand
...Dist...1 M L T 416 ... 892

12 B 247 (P.C.), Manohar Ganesh Tambekar v.
Lakhmiram Govindram...F...8 Bom
L R 756 ... 297

12 B 276, In re, The application of Sheshamma
...Refd. to...7 Bom L R 697=30 B
275 ... 62

12 B 400, Pallongi v. Jordan...R...10 C W N
634=33 C 639 ... 238

12 B 411, Venkapa Naik v. Baslingappa...Expl
and discussed...8 Bom L R 932... 210

12 B 501, Jugaldas v. Ambashankar...R...29
M 1 ... 515

12 B 678, Agrachand v. Rakhma...R...2 N L
R 106 ... 445

13 B 187, Karmali v. Rahimbhai...F...8 C L
J 119 ... 284

13 B 285, Yeknath v. Warubai...R...8 Bom L
R 897 ... 29

13 B 330, Waghela v. Shaik Masludin...R...8
Bom L R 932 ... 210

13 B 338, Iohha Dhanji v. Natha ...R...9 O C
221 ... 596

13 B 389, Queen-Empress v. Murarji Gokuldas
...R...33 C 386=10 C W N 501 ... 28

13 B 424, Sayad Nyamtula v. Nana...R... 2 N L R 92 ... 620	17 B 49, Gowri v. Vigneshvar...R... 8 Bom L R 858 ... 589
13 B 520 = 16 I A 156, Narivahoo v. Turner ... Refd. to... 9 C W N 952 = 93 C 560 ... 582	17 B 114, at p 118, Gajabai v. Shrinant Shalajirao Maloji Raje Bhoslo...R... 10 C W N 802 (P.C.) = 4 C L J 9 = 8 Bom L R 446 = 3 A L J 484 = 1 M L T 211 = 30 B 491 = 16 M L J 446 ... 489
13 B 571, Hussanbhoy Visram v. The British India Steam Navigation Company ... F... 1 M L T 387 ... 197	17 B 164, Krishna Rav v. Shankar Rav. ...Appr ... 4 C L J 357 = 11 C W N 12 = 33 C 1806 ... 472, 473
...compared... 1 M L T 387 ... 197	17 B 341, Rahimbhoy Habibbhoy v. Turner ...R... 2 N L R 98 ... 190
13 B 656, Tukaram Anant Joshi v. Vithal Joshi ...D... 3 L B R 169 ... 285	17 B 357, Nandram Daluram v. Nimehand Jadavchand...R... 2 N L R 81 ... 286
14 B 32, Savitri v. Ramji...R... 9 O C 80 ... 303	17 B 375, Dagdu v. Panchamsingh Gangaram ...F... 21 T L R 152 ... 320
14 B 32, Gopal Ramchandra v. Gangaram Anandishet...Refd. to... 2 N L R 17 ... 8	17 B 413, Kastur Chand Bahiravdas v. Sogar Mal Shriram...R... 127 P R 1906 ... 349
14 B 232, Savitri v. Ramji ...F... 32 P L R 1906 ... 304	17 B 417, Tippanna v. The Southern Maratta Railway Company...F... 2 N L R 125 ... 56
14 B 458, Faki 'Abdulla v. Babaji Gungaji ...R... 2 N L R 32 ... 620	17 B 425, Mahadaji v. Jodi...R... 9 O C 144 ... 595
14 B 490, Gokibai v. Lakhmidas...F... 4 C L J 74 ... 495	17 B 503, Annaji Dattaraya v. Chandrabai...R ... 9 O C 119 (B) 520, 521
14 B 597, Hari Vithal v. Jairam Vithal...F... 2 N L R 101 ... 874	17 B 733, Durga Shankar v. Bai Naval...not followed... 1 M L T 268 (F.B.) = 16 M L J 479 ... 230
15 B 24, Mora Joshi v. Ramchandra Dinkar Joshi ... Distd... A W N (1905) 225 = 28 A 155 ... 898	18 B 48, Virchand v. Kumaji...F... 9 O C 284 ... 610
15 B 77, Collector of Kanara v. Krishnappa Hedge ...overruled... 8 Bom L R 689 (F. B.) ... 230	18 B 84, Pundik v. Achut...R... 3 C L J 545 = 10 C W N 986 = 33 C 1323 ... 588
15 B 82, Koshinath Narayan v. Govinda Bin Peroji ...R... 16 M L J 463 = 1 M L T 426 ... 375	...explained and D ... 3 C L J 545 = 10 C W N 986 = 33 C 1323 ... 588
15 B 104, Govind bin Lakshman Shet v. Dhondbaran ...Refd. to and F... 16 M L J 41 = 1 M L T 25 = 29 M 195 ... 207	18 B 209, Balvant Ganesh v. Nana Chintamon ...Refd. to... A W N (1906) 3C = 3 A L J 181 = 28 A 340 ... 376
15 B 416, Ram Krishna Bhikaji v. Bhimabai...F... 33 C 1232 ... 374	18 B 369, Chenbasapa v. Lakshman Ram Chandra...F... 66 P R 1906 ... 867
15 B 424, Nagu v. Yalu ...F... 33 C 693 ... 601	18 B 372, Babaji v. Krishna...R and D... 3 P R 1906 = 109 P L R 1906 ... 185
15 B 692, Narayan Vithal Maval v. Ganaji ...Appr... A W N (1906) 162 = 3 A L J 548 = 28 A 638 ... 705	18 B 464, Bai Chandaba v. Kuver Saheb Bapu Saheb...over-ruled... 8 Bom. L R 689 (F.B.) ... 230
16 B 134, Dasharatha v. Nyahalchand...F... 2 N L R 92 ... 717, 718	19 B 34, Sha Karamchand v. Ghela Bhai ...D 3 C L J 112 = 10 C W N 297 = 83 C 306 ... 238
16 B 202, Goguldas Bulabdas v. James Scott ...R... 9 O C 365 ... 275	19 B 159, Balaram Harichand v. The Southern Maratta Railway Company...F... 2 N L R 125 ... 56
16 B 343, Kashinath Sitaram Oze v. Shridhar Mahadev Patankar...F... A W N (1906), 95 = 3 A L J 384 = 28 A 479 ... 622	
16 B 731, Vajiram v. Ranchordji...Refd. to... 7 Bom L R 659 = 30 B 101 ... 25	
17 B 6, Moti Lal v. Ghella Bai...cited and F... 10 P R 1906 ... 349	
17 B 29, Ram Krishna Moroshwar v. Ramabai ...R... 127 P R 1906 ... 349	

[This is a mistake for 17 B 114 at p 118,

19 B 105, Great Indian Peninsula Railway Company v. Raisett...F... 108 P R 1906 (F.B.)	602	21 B 548, Babu v. Kajir...dissented from...4 C L J 566 ...	302
19 B 301, Muroba Ramachander v. Ghansham ...F...A W N (1906), 55 = 3 A L J 165 = 28 A 391	590	21 B 563, Ganesh v. Ramchandra...R...2 N L R 123	522
* 19 B 323, Patal Mafatlal Narandas v. Bai Parson...R...9 O C 1	587	21 B 709, Bai Motivahoo v. Bai Mamoochai...F... 8 Bom L R 921	943
19 B 697, Kasiba v. Sripot Nasib...R...3 C L J 422 (S.B.) = 10 C W N 673 = 33 C 713	...	22 B 176 (183), Tatia v. Babaji...R...16 M L J 524	880
...	344	22 B 184, British India Steam Navigation Company v. Ratansi...Compd...1 M L T 387	197
20 B 61, Maharana Shri Rammal Singh v. Vadi-lal Vekhalchand...R...2 N L R 25...703	...	...	197
20 B 78, Sonshot Antushet Teli v. Vishnu Babaji Johari...Refd. to... 7 Bom L R 941 = 30 B 290	107	22 B 199, Mahabaleswar v. Durgabai...Refd. to... 16 M L J 22 = 29 M 161	468
20 B 104, Cursandas Natha v. Ladvahoo...R 164 P L R 1906	VIII	22 B 225, Mubji v. Fakir Chand...R...9 O C 373	619
20 B 116, Hurbai v. Hifraji Byramji Shanja...F...21 T L R 223	641	22 B 267, Nandhar Rao v. Ramrao and another ...R...U B R (1905), Civ. Pro, 36	242
-----Distd... 4 C L J 485 = 11 C W N 71...641 & 642	...	22 B 409, Lallu v. Jagmohan...R...21 T L R 56	518
-----D... 4 C L J 578	649	22 B 430, Bai Shrinibai v. Kharshedji...not F...29 M 24 = 16 M L J 8	309
20 B 199, Babu v. Shivappa...R...9 O C 97	649	22 B 440, Kamayya v. Dorappa...F...16 M L J 28	716
...Appr. and F... 1 M L T 433	885	22 B 475, Chintaman v. Chintaman...Refd. to...7 Bom L R 659 = 30 B 101	25
20 B 298, Premji Jivan Bhat v. Haji Cassum Fuma Ahmed...F...2 N L R 4	529	22 B 482 (489), Ramabai v. Ramkrishna...R. 4 C L J 323	457
20 B 380, Hildreth v. Sayaji Piraji...R...2 N L R 179	VI	22 B 506, Abdul Rahiman v. Maidin Saiba ...not F...1 M L T 293 = 16 M L J 303	447
20 B 389, Goindram v. Tatia...F...9 O C 269 (B)	590	22 B 624, Martand Balkrishna Bhat v. Dhondo Damodar Kulkarni...R and D...15 M L J 445	920 & 921
20 B 390, Desai Lallubhai Jethabhai v. Mundas Kuberdas...F...3 A L J 320 = A W N (1906), 113 = 28 A 607	792	-----, Martand v. Dhondo...R...157 P L R 1906	921
20 B 435, Hari Vasudev Kunat v. Mahadu Dad Gavda...R...127 P R 1906	349	22 B 654, Ite Shidappa...R...9 O C 65	745
20 B 615, Chagandas v. Gansing...F...29 M 217	908	22 B 686, Ramchandra Vithu Ram v. Jairam ...R...2 N L R 106	445
20 B 753, Govind v. Vithal...D...4 C L J 198	174	22 B 718, Chandrasang Versabhai v. Khimabhai Haghabhai...R...3 L B R 168	274
20 B 798, Ganga Ram v. Secretary of State for India...R...21 T L R 67	414	22 B 771, Nandram v. Babaji...F...2 N L R 137	918
* 21 B 198, Ganesh Lala v. Bapu...Refd. to...7 Bom. L R 995 = 30 B 226	313	22 B 783, Gurshidawa v. Gangaya...R...3 A L J 819 = A W N (1906), 310	264
21 B 201 (F.B.), Mulji Lala v. Lingu Makaji...F...66 P R 1906	867	22 B 846, Chimilal v. Baijethi...F...9 O C 284	610
21 B 223, Bhomshetti Jinappa Shetti v. Umabai...F...2 N L R 63	846	22 B 849, Bai Ful v. Desai Manorbhai Bhavanidas...R...8 L B R 194	280
21 B 333, Manuti v. Rama...R...3 P L R 1906	608	-----R... 78 P R 1906 = 150 P L R 1906	586
21 B 376, Harilal v. Bai Rewa...R...8 Bom L R 482	522	22 B 891, Hira Lal v. Bai Asi...F...A W N (1905), 218 = 28 A 138	590

* This is a mistake for 19 B 320

22 B 399; Shivji Ram v. Waman...R and F...8 A L J 675=A W N (1906), 288 887	25 B 161=2 Bom L R 864, Govind Hari v. Parashram...Refd. to...7 Bom L R 811=80 B 186 ... 221 and 718
22 B 35, Hari Pranesh v. Yamuna Bai...R...1 M L T 395=16 M L J 548 ... 634	25 B 222*, Bhagwant Appaji v. Kedari Kashi- nath...F...3 L B R 188 ... 889
23 B 80, Nauroji Manockji Wadia v. Perasbai ...R...8 Bom L R 770 ... 19 & 302	25 B 287, Hanmantrav and another v. Se- cretary of State for India...R...U B R (1906), Evidence 7 ... 440
23 B 188, Abdul Kadar v. Bapubhai...D...8 L R 758 ... 758	25 B 478, Mancharam v. Fakirohand...Refd. to and F...3 C L J 293=38 C 487 267
23 B 206, Raghu Nath Mukund v. Sarosh K R Kama ...R...9 O C 389 ... 821	25 B 593, Ardesir v. Vajcsing...R...2 N L R 174 ... 618
23 B 406, Honapa v. Narsappa...R & D...8 P R 1906=100 P L R 1906 ... 185	25 B 616, Atmaram v. Umedram...D...3 C L J 363=10 C W N 788=88 C 812 162
23 B 478, Kusaji v. Vinayak...R...8 Bom L R 807 ... 632	26 B 109 (115), Virupakshappa v. Shidappa and Basappa...R...29 M 104...824, 825
23 B 513, Parvati v. Ganpati ...R...8 Bom L R 858 ... 589	26 B 121, Rango v. Bhomshetti...F...2 N L R 187 ... 918
23 B 525, Sagtji v. Namdev ...R...16 M L J 524 ... 889	26 B 198, Rama Rao v. Rustum Khan...R... 16 M L J 471=1 M L T 423 ... 205
23 B 644 (652), Bhagawan v. Ganu...R...8 Bom L R 968 ... 106	26 B 208†, Bai Full v. Adesang Pahadsang...R... 8 L B R 168 ... 274
23 B 658, Pransukham Dinanath v. Bai Lad- kar ...F...3 L B R 160 ... 285	26 B 287, Sakarlal v. Bai Parvatibai...R...3 C L J 112=10 C W N 297=38 C 306 288
23 B 666, Mohidin v. Shivlingappa...F...A W N (1906), 80=28 A 484 ... 748	26 B 379, Danappa v. Yamnappa...R...9 O C 259 (B) ... 894 904
*23 B 760= Bom L R 414, Balvantrao v. Sprott ...qualified...8 Bom L R 904 (F. B.) 103	26 B 500, Vasudeo Bhikajee v. Balajee Krish- na...F...9 O C 91 (B)... 919
24 B 65, Hunsraj Purmanand v. Ruttonji Walji ...F...8 A L J 203=A W N (1906) 77= 28 A 428 ... 88	26 B 519, Shivram v. Bal...R...21 T L R 256 196
24 B 128, Shivmurteppa v. Virappa...D...8 Bom L R 758 ... 731	26 B 526, Ram Krishna v. Shamrao...Appr... 4 C L J 357=11 C W N 12=88 C 1806 ... 472 & 478
24 B 260, Shrinivas Murar v. Hanmant Chavdo Deshpande...R...2 N L R 98 ... 190	26 B 562, Haji Ajam Goolam Hossain v. Bombay and Persia Steam Navigation Company...F...108 P R 1906 (F. B.) 602
24 B 260, 284 & 285, Shrinivas v. Hanmant...R... 9 C W N 636=1 C L J 408=38 C 257† 607	26 B 661, Vinayak v. Dattatraya...R...9 O C 254 ... 306
24 B 360, Krishnaji Narayan v. Raj Mal Nanak Chand ...F...66 P R 1906 ... 867	26 B 669, East India Railway Company v. Jethi Mull Ramanand...F...A W N (1906) 101 =8 A L J 320=28 A 552 ... 56
24 B 498, Kanyappa v. Rachapa ...D...A W N (1906) 212 ... 596	27 B 162, Bala Bai v. Ganesh...R...9 O C 354 272
— — —, Kanyappa v. Rachapa ...R 10 M L 90=29 M 284 ... 596	27 B 604, Manekshah Sorabji Gandhi v. Da- dabhai Jamsheji...Appr...2 N L R 54 310
9 O C 221 ... 596	
24 B 504, Chaudhuri v. Raji Bhan ...R 90 P R 1906 ... 621	
24 B 619, Ragho Shitaram v. Hari...R 16 M L J 99=29 M 284 ... 596	

* This is a mistake for 23 B 761

† In Col. 607 this is wrongly printed as,
38 C. 527

* This is mistake for 25 B 202

† This is a mistake for 26 B 208

27 B 622, Damodar v. Sonaji...not F...10 C W N 303=4 C L J 520 ... 633, Diss...1 M L T 395=16 M L J 548 ... 684	1 C 240, Delhi and London Bank v. Wordie ...F...4 C L J 238=33 C 1065... 76
28 B 11, Guruvayya v. Dattatraya...Appr... 10 C W N 551=3 C L J 576=33 C 618 ... 597, Guruvayya Gouda v. Dattatraya Anant...F...33 C 1079 ... 598	1 C 275, Hurry Mohun v. Shonabun...R...3 C L J 15=10 C W N 510=33 C 815...509
28 B 31, Jaitaram Ram Krishna v Ram Kri- shna Nandlal...F...45 P R 1906=120 P L R 1906 ... 758	1 C 387, Bhuggobutty Dossee v. Shamachurn Bose...R...2 N L R 106 ... 445
28 B 103, Ishwar v Gopal...F...2 N L R 187 ... 918	1 C 365, Adhirance Narain Chomary v. Shoon- males Pat Mahadai... filed on...10 C W N 1074=4 C L J 476 ... 494
28 B 264, Manilal Umderam v. Nanabhai Ma- neklal...R...33 C 846 ... 536	2 C 113, Luchmi Dai Koori v. Asman Sing... F...A W N (1906) 7=3 A L J 95=28 A 295 ... 677
28 B 287, Danjibhai v. Mathurbhai...R...8 Bom L R 777 ... 292	2 C 341, Konwar Doorganath v. Ram Chunder ...Refd. to...3 C L J 260 ... 85
28 B 298, Jethalal Hira Chand Vakil v. Lalbhai Dalpatbhai Seth...F...2 N L R 4...529	2 C 445, Kellie v. Fraser...F...4 C L J 236=33 C 1065 ... 76
28 B 378=6 Bom L R 342, Bhagwantappa v. Viswanath...Distd...7 Bom L R 659= 30 B 101 ... 25	3 C 30, Jogesh Chunder Dutt v. Kalichurn Dutt ...R...16 M L J 63=29 M 833 ... 809
28 B 416, Gorind v. Dada ...not F...10 C W N 308=4 C L J 530 ... 633, Govind v. Dada...Diss...1 M L T 395= 16 M L J 548 ... 684	3 C 174, Pogose v. Bank of Bengal...R...U B R (1906), Evidence, 13 ... 435
28 B 466, Lalchand v. Lakshman...approved... 1 M L T 153 (F.B.)=29 M 836=16 M L J 395 ... 890	3 C 198 (P.C.), Deendyal Lal v. Jugdey Narain Singh...F...2 N L R 52 ... 490
29 B 207, Dayachand Nemchand v. Hemchand Dharachand...R...8 Bom L R 885... ... 47 & 370	3 C 224, Gossain Dass Chunder v. Issur Chun- der...R...9 O C 161 ... 740
29 B 229, Bai Mchorbai v. Magauchand ...R... 8 Bom L R 885... 47 & 370	3 C 397, Norender Narain Singh v. Dwarka Lal Mundur...F...74 P L R 1906 ... 794
29 B 285, Walji Mathuradas v. Ebji Umersey ... and others...R...2 N L R 81...286	3 C 551, Sheikh Khoorshed Hossein v. Nubbee Fatma...D...8 Bom L R 758 ... 731
29 B 291=7 Bom L R 165, Chandulal Sukhlal v. Sidhruthrai...Refd. to...7 Bom L R 611=30 B 205 ... 381	3 C 645 (P.C.), Thakur Shere Bahadur Singh v. Thakurain Daryao Kunwar...R...9 O C 113 (B)... 134
29 B 338=7 Bom L R 477, Mahomedunissa Begum v. Bachelor...F...8 Bom L R 652 ... 645	4 C 96, Guni Mahamad v. Morn...R...10 C W N 787 ... 363
29 B 621, Manilal v. Vanmalidas...R...8 Bom. L R 777 ... 292	.....R... 10 C W N 952=33 C 1010 ... 364
29 B 621, Manilal Hargovindas v. Vanmalidas Amrat Lal...R...A W N (1906) 136= 28 A 621... 293	4 C 340, Ram Ratton Mondul v. Netro Rally Dassee...R...140 P L R 1906 ... 566
30 B 273, Cullianji v. Raghowji...R...2 N L R 179 ... 722 I. J. R. Calcutta Series.	4 C 342, Prasunno v. Kristo...R... 10 C W N 566 ... 153
* 1 C 91 Balkissen Das v. Luchmeeput Singh ...R...2 N L R 49 ... 165	4 C 400 (P.C.), Bazayet Hossein v. Sooli Chund ...F...16 M L J 413=29 M 508 ... 887
	4 C 448, Dwarka Nath v. Baroda Persad...R... 11 C W N 65 ... 519
	4 C 475, Kaliprasunno v. Kamini...F...4 C L J 817 ... 903
	4 C 543, Khuggender Narain Chowdhry v. Sha- rupgir Oghorenath...R...3 A L J 717= A W N (1906) 289 ... 435
	4 C 576, Surnompyee Dabee v. Koomar Puresh Narain Roy...F...3 C L J 337 ... 80
	.....R... 3 C L J 301=33 C 683 ... 90
	4 C 723, Jallidar Singh v. Ram Lal...F...2 N L R 52 ... 490

* This is a mistake for 3 C 91.

4 C 737, Mirza Jehan Kadur v. Afsar Bauh ...R...O O C 249 ... 688	4 C 925, Dwarka Nath Misser v. Hurriah Chunder...R...3 C L J 343=33 C 531 ... 91	4 C 809, Rai Narain Das v. Nownit Lal...F... 2 N L R 52 ... 490	5 C 82, Sroonath Roy v. Cally Doss Ghose ...F...4 C L J 288=33 C 1065... 76	5 C 113, Uddoy v. Jadublal...Appl...4 C L J 399 ... 659	5 C 148, Suraj Bunsii Koer v. Shoo Persad Singh...R...A W N (1906) 10=3 A L J 127 ... 488	...Refd. to... 1 M L T 21=16 M L J 69=29 M 200 ... 489	5 C 198, Kishen Datt Ram v. Muntaz Ali Khan...F...33 C 1212 ... 669	...R... 33 C 1212 ... 669	5 C 273, Sarat Sundari Debya v. Ananda Mohun Sarma...R...10 C W N 818 ... 77	5 C 370, Sikher Chund v. Dulputty Singh...R... 9 C W N 636 =1 C L J 408 = 33 C 527* ... 607	5 C 493, Koomud Chunder Dass v. Chundar Kant Mookerjee ...F...80 P R 1906 ... 860	5 C 615, Puddo Kumaree v. Juggut Kishore ...F...3 C L J 502 =10 C W N 695 =33 C 947... 535	5 C 684, Koonjbehari Dhur v. Premchand ...R...21 T L R 56... 518	5 C 776, Moniram Colita v. Keri Kolutani...R... 16 M L J 178=29 M 437 ... 472	5 C 786, Baba Muhamad v. Webb ...F... 44 P R 1906 ... 250	5 C 832, Toponidhee Dhirj Gir Gosain v Sree- putty Sahance ...F... 7 Bom L R 821=33 B 220 ... 379 & 806	6 C 8, Chunder Shekhur Bandapadhaya v. Obhoy Churn Bagchi ...F...3 L J 876 ... 80	6 C 22, Joykishen v. Ataoor...F...3 C L J 188 ... 286 & 589	6 C 64, Buldeo Doss v. Howe...R... U B R (1906) Contract 9 ... 850	6 C 94, Nobo Coomar v. Siru Mullick...F... 4 C L J 510 ... 612
--	--	--	--	--	---	--	--	------------------------------	--	---	---	--	---	--	--	---	---	--	---	---

6 C 171 (F. B.), Gajjoo Lal v. Fattch Lal...R... 56 P R 1906=101 P L R 1906 ... 145	6 C 687, Bibee Solomon v. Abdoel Azeez ... differed...3 C L J 119 ... 284	6 C 704, Rani Anund Koer v. The Court of Wards...F...1 M L T 183=16 M L J 307 (F.B.)=29 M 390 ... 506	6 C 815, Ram Sobuk v. Rafm Lal...D... 10 C W N 551=3 C L J 576=33 C 618... 597	6 C 843, Kameswar Pershad v. Run Bahadur Singh...Appl...33 C 842 ... 515	7 C 74=9 C L R 357, Attermoney Dossee v. Hurry Doss Dut ..Refd. to... 9 C W N 952=33 C 560 ... 532	7 C 78, Raj Kishore Shaha v. Bhadoo Noshoo.. ...Distd...33 C 849 ... 209	7 C 250, Sheikh Akbar v. Sheikh Khan .. 16 M L J 484=29 M 111 ... 198	...R... 9 O C 815 ... 777	...F... A W N (1906), 9=3 A L J 25=28 A 298 ... 866	*7 C 201, Pertab Chunder Ghose v. Mohen- dranath Parkait...R...8 Bom L R 764 ... 686	7 C 337, Ramdhani Sahai v. Rajrani Koer...R 3 L B R 225 ... 260	7 C 388 (393), Raja Nilmoni Singh v. Ram Bandhu Rai...R...10 C W N 991 ... 63	7 C 499, Shahebzadi Shahumshah Begum v. Fergusson...R...A W N (1906) 107= 3 A L J 341=28 A 600 ... 121	...R... 9 O C 275 ... 281	7 C 594, Rajnarain v. Universal Life Assurance Company...F...2 N L R 45 ... 220	7 C 616, Gogun Chunder Ghose v. Dauron- dhur Mundul...F...3 C L J 363=10 C W N 788=33 C 812 ... 162	7 C 714, Jonmenjoy Mullik v. Dossmoney Dos- see...Distd...33 C 849 ... 209	7 C 733†, Syed Sufdar Reza v. Amzad Ali...D.. 33 C 502 ... 785	7 C 789, Bungsee Singh v. Soodist Lal...R... 127 P R 1906 ... 349	...Distd.. 79 P R 1906 ... 598	8 C 42, Rajendronath Dutt v. Shaikh Muham- mad Lal...R...60 P R 1906=118 P L R 1906 ... 492
--	--	---	---	---	--	---	--	------------------------------	---	--	--	--	--	------------------------------	--	---	---	---	--	-----------------------------------	---

*This is mistake for 33 C 257.

† This is a mistake for 6 C 786.

*This is a mistake for 17 C 791.

† This is a mistake for 7 C 708.

8 C 51=8 I A 123 (P.C.), Mungul Pershad v. Girja Kant...D... 8 C L J 240=10 C W N 209 ... 811	9 C 648, Srishteedhur Biswas v. Mudan Sirdar ...F...3 C L J 343=33 G 531 ... 91
8 C 75, Kirty Churn Mitter v. Aunath Nath Deb...R...8 Bom L R 885...47 and 370	9 C 780, Tarce Mahomed v. Mahomed Mahbood...Appl...3 C L J 847 ... 592
8 C 89, Hem Chandra Chowdhuri v. Brojo Sundari Dobi...R...3 C L J 95 ... 629	3 C L J 240=10 C W N 209... 683
8 C 151,* Mungul Pershad Dichit v. Girja Kant Lahiri...R...47 P R 1906... 278	9 C 810, Sharat Chunder Ghose v. Kantik Chunder Mitter...R...3 C L J 119 ... 284
8 C 174, Protap Chandra Dass v. Peary Chowdhram, The rule laid down in this is not of General application... 3 C L J 112=10 C W N 297=33 C 306 ... 239	9 C 869, Phaobanesari v. Fudobhandra Narayan Malik...R...U B R (1906) Limitation 7 ... 624
8 C 327, Hami dolla v. Faizunnisa...F...3 C L J 49 ... 648	9 C 908, Surnomoyee v. Denonath...R...9 O C 296 ... 925
8 C 468, Imam Ali v. Poresch Mundul...Distd... 1 M L T 393 ... 115	10 C 63, Mdun Mohun Chowdhry v. Ashad Ally Bepuree...R...9 O C 147 (B)...619
8 C 697, Alangamonjari Dabee v. Sonamoni Dabee...R...16 M L J 491 ... 523	10 C 109=10 I A 171, Surendranath Bonerjee v. Chief Justice and Judges of the High Court of Bengal...R&F...8 C L J 67=33 C 927 ... 300
8 C 716, Ram Coomar v. Jokur Ali...Appl...3 C L J 347 ... 592	10 C 138, Hurry Churn Dass v. Nemai Chand Keyal...not F...25 M 24=16 M L J 8 ... 309
8 C 720, Mahbubun v. Umrao Begum...F... 29 M 172 ... 369	10 C 344 (P.C.), Isri Dut Koer v. Hansbutti Keerani...Distd...2 P L R 1906 ... 382
8 C 757, Kirty Churn Mitter v. Annath Nath Deb...Refd to...A W N (1906) 38=3 A L J 181=28 A 340 ... 376	10 C 312, Panchoomony Dossee v. Troylucko Mohiney Dossee...R...9 O C 119 (B)... 520 & 521
8 C 975, Joytara Dassee v. Mahomed Mobaruck...R...8 Bom L R 885...47 & 370 ...R...3 C L J 316 ...156	10 C 357, Eshan Chandra Safooi v. Nanda moni Dossee...Dis...3 C L J 119 ... 284
9 C 100, Wazir Mahton v. Lalit Singh...Appr and F...1 M L T 298=16 M L J 393 ... 447	10 C 489, Jellicoe v. The British India Steam Navigation Company...Compared...1 M L T 387 ... 197
9 C 181, Kelly v. Paterson...R...16 M L J 533 ... 925 & 926	387 ... 197
9 C 237, Abhoy Charan Ghose v. Gobinda Chandra Dey...D...4 C L J 56...492	10 C 523, Luchmon Sahai Chowdhry v. Kanchan Ojhain...R...21 T L R 41 ... 584
9 C 290, Huro Prosad Roy v. Kali Prosad Roy...R...68 P R 1906=121 P L R 1906 ... 266	10 C 533, Fakaruddin Mahomed Ahsan v. Official Trustee of Bengal...R...U B R (1905), Civ. Pro. 86 ... 242
9 C 325†, Manickya Moyee v. Baroda Prosad Mookerjee...R...33 C 329 ... 598	10 C 549, Fazl Imam v. Metta Singh...R...3 C L J 95 ... 629
9 C 363, Joy Coomar v. Bundhoo Lall...R...33 C 133... 697	10 C 612, Ashootosh Chandra v. Tara Prosanna Roy...F...10 C W N 529 ... 815
9 C 367, Krishna Gobind Dhur v. Hari Churn Dhur...F...10 C W N 848 ... 155	10 C 697, Gopi Nath Choboy v. Bhingwat Pershad...D...29 M 65 ... 807
9 C 406, Rani Dhun Dhur v. Maneah Chunder Chowdhry...D...29 M 217 ... 908	10 C 713, Oriental Bank Corporation v. Gobind Seal...R...3 L B R 192 ... 81
9 C 586, Parbatty Dassi v. Purno Chander...F...3 C L J 521 ... 658	10 C 740=11 I A 83, Narotam Das v. Sheo Par-gash Singh...D...4 C L J 246 ... 682
9 Cat p 607, Oriental Bank v. Gobind Seal...R...10 C W N 449 ... 651	10 C 996, Jee Lal Singh v. Ganga Pershad...R...2 N L R 101 ... 874
	10 C 1085, Goculdas Gopaldas v. Puranmal Premsukhdas...R...4 C L J 49 ... 904

*This is a mistake for 8 C 51.

†This is a mistake for 9 C 355.

10 C 1085, Gokuldas Gopaldas v. Purnamal Premasukdas... (R. & F.)... 29 M 87 ... 918	12 C 348, Bachha Jha v. Jugmon Jha... R... 10 C W N 802 (P.C.)=4 C L J 9=8 Bom L
10 C 1102, Nobokishore Sarma v. Hari Nath Sarma... R... 9 O C 104... .. 505	" R 446=3 A L J 484=1 M L T 911=80 B 431=16 M L J 446 .. 483
11 C 6, Amir Hussan Khan v. Sheo Baksh Singh... R... 29 P R 1906=97 P L R 1906 829	12 C 389, Miller v. Runga Nath... R... 4 C L J 246 682
11 C 74, Tripura Sundari v. Durga Churn Pal... F... 21 T L R 157 821	12 C 414, Nilakant Banerji v. Suresh Chandra... R... 3 C L J 205=38 C 425 .. 677
11 C 93, Shama Charan v. Madhab Chandra... R... 3 A L J 504=A W N (1906) 318=28 A 722 242	12 C 477, Danmul v. British India Steam Navigation Company... Diss... 108 P R (1906) (F. B.) 802
11 C 111, Madho Persad v. Gajudhar... D... A W N (1906), 309 795	12 C 503, Udit Narain Singh v. Harogouri Prasad... F... 16 M L J 475=1 M L T 248=29 M 529 625
11 C 121 (P.C.), Kalidas Mullick v. Kanaya Lal Pundit... F... 45 P R 1906=120 P L R 1906 758	12 C 597, Prangour Mozoomdar v. Himanta Kumari Debye... F... 21 T L R 152 820
+11 C 147, Bhutanath Dey v. Ahmed Hosain... D... 4 C L J 578 649	12 C 614, Shurnomoyee Dasi v. Srinath Das... R... 9 O C 147 (B) 619
11 C 158, Coggan v. Pogose... R... 10 C W N 276=38 C 410=4 C L J 102... 690 & 700	12 C 642, Oriental Bank v. Charriol... R... 10 C W N 551=3 C L J 576=38 C 618 697
11 C 186, Pertab Narain Singh v. Triloki Nath Singh... relied on... 10 C W N 955=38 C 1001.... .. 38	..... R... 38 C 329 598
..... R... 9 O C 339 821	12 C 663, Ramlal Sett v. Kanaya Lal Sett... R... 1 M L T 227 41
* 11 C 196, Pertabnarain Singh v. Trilokinath Singh... D... 107 P R 1906 ... 820	12 C 706 (722), Lopez v. Lopez... R... 8 Bom L R 770 19 and 362
11 C 227, Ganga Prasad Bhowmik v. Debi Sundari Dabee... R... 3 C L J 95 ... 629	13 C 13, Noor Ali Chaudhri v. Koni Meah... R... 43 P R 1906 (F.B.)=104 P L R 1906 759
11 B 301 (P.C.), Run Bahadur v. Luchko Koer... R... 10 W N 820 209	13 C 21, Nanomi Babuasin v. Mudhun Mohun... Refd. to... 1 M L T 28=16 M L J 69=29 M 200 489
11 C 386=12 I A 67, Rani Bhagoti v. Rani Chaudan... R... 4 C L J 162=38 C 881 611	13 C 75 (77), Dwarka Nath Rai v. Kali Chunder Rai... R... 29 M 29 .. 560, 674
11 C 417, Bhut Nath Dey v. Ahmed Hosein... R... 21 T L R 223 641	13 C 101, Sarat Sundari v. Bhoba Pershad... F... 10 C W N 843 155
..... Distd... 4 C L J 485=11 C W N 71 ... 641 & 642	13 C 162, Ahmed Mirza Saheb v. Thomas... R... 8 Bom L R 885 .. 47, 370
11 C 434, Hori Das Mal v. Mahomed, Jaki... R... 38 C 1349 458	13 C 303=13 I A 84, Jagadamba Chowdhurani v. Dakhina Mohan... R... 10 C W N 1065=8 Bom L R 722=16 M L J 440=3 A L J 695=4 C L J 405=1 M L T 265=9 O C 877=23 A 727 (P.C.) .. 585
11 C 566, Haridas Sanyal v. Pran Nath Sanyal... D... 43 P R 1906=122 P L R 1906 882	..... R... 9 C W N 638=1 C L J 408=38 C 257* 607
11 C 718, Hart v. Tara Prasanna... D... 3 C L J 885 259	14 C 1, Sadhusaran Singh v. Panohdeo Lal... R... 10 C W N 923 (P.C.)=4 C L J 177=16 M L J 365=6 Bom L R 719=3 A L J 699=1 M L T 308=38 C 1178 79
12 C 83, Hurmut Jan Bibi v. Padma Loochun... R... 10 C W N 991 63	
12 C 333, Abdul Hakim v. Gonesh Dutt... Distd... 1 M L T 333 115	
12 C 330, Kristo v. Radha... R... 2 N L R 42 356	

+ This is a mistake for 11 C 186.

* This is a mistake for 11 C 417.

* This is wrongly printed as 38 C 527 in Cal 607.

14 C 122, Jogendra Nath Mukerji v. Jugobundhu Mukerji... Distd... A W N (1906) 169 = 2 A L J 700 = 28 A 89 .. 498	15 C 242, Ashanulla v. Collector of Dacca... R... 3 C L J 545 = 10 C W N 986... 83 C 1923 568
14 C 189, Shamnugger Jute Factory Co. Ltd., v. Ram Narain... R... 4 C L J 198... 863 and 864	15 C 282, Okhoy money Dasse v. Nilmoney Mullick... F... 3 C L J 502 = 10 C W N 695 (S.B.) = 83 C 947* .. 21
14 C 286, Joy Chunder v. Beppro Charn... R... 4 C L J 198 .. 865* and 864	15 C 432, Govinda Ram Mondal v. Bholanath Bhatta... F... 9 P R 1905 (Rev) = 65 P L R 1906 148
14 C 276, Mahamed Abidali Kumar v. Ludden Sahiba... F... 9 O C 49 (B) .. 415	15 C 517, Bhagbhat Pershad Singh v. Girja Koer... Refd. to... 1 M L T 28 = 16 M L J 69 = 29 M 200 489
14 C 287, Sheolochun Singh v. Saheb Singh ... R... 21 T L R 56 .. 518	15 C 546, Prem Chand v. Purnima Dassi... ex- plained... 3 C L J 52 .. 902
14 C 484, Mookoond Lal Pal Chowdhury v. Mahomed Sami Meah... F... 3 C L J 181 204	15 C 674, Kedar Nath Chatterji v. Rakhal Das Chatterji... F... 3 C L J 881 .. 256
... .. R... A W N (1906) 171 = 3 A L J 556 = 28 A 655 246 and 247	15 C 713, Bisva Nath Shah v. Naba Kumar Chowdhary... F... A W N (1906), 6 = 3 3 A L J 6 = 28 A 292 855
14 C 592, Sundari Dassee v. Mudhoo Chunder Sircar... cited... 3 C L J 816 .. 156	15 C 756, Radha Madhab Haldar v. Monohur Mukerjee... R... 40 C W N 820 .. 209
14 C 627, Amrit Lal v. Madho Das... D... 124 P R 1906 317	... .. R... 1 M L T 145 = 16 M L J 372 = 29 M 426 (F.B.) 887
14 C 791, Ram Doyal v. Janmejoy... D... 10 C W N 551 = 3 C L J 576 = 83 C 613 597	16 C 81, Poresh Nath Chatterjee v. Secretary of State for India... Diss... 3 L B R 203 (F.B.) 231
14 C 801 = L R 14 I A 168, Mylapore v. Yeo Kay... F... 10 C W N 551 = 3 C L J 576 = 83 C 613 592	16 C 83, Bhima Singh v. Sarwan Singh... R... 3 L B R 225 260
14 C 809, Ram Das v. Mozuffor Hosain Saha... D... 4 C L J 79 .. 904	16 C 40, Hari Saran Motra v. Bhubaneshwari Debi... R... 9 O C 339 .. 821
14 C 861, Grish Chunder Roy v. Braughton ... R... 21 T L R 56 .. 518	16 C 132, Shoonath v. Janki Prosad... R... 4 C L J 246 446
* 14 C 940 = 14 I A 101, Anangananjari v. Tripura Soondari... R... 4 C L J 198 .. 174	16 C 233, Abdul Majid v. Jew Narain Matho ... F... 16 M L J 63 = 29 M 833 .. 809
15 C 47, Jugobundhu v. Jadu... F... 2 N L R 45 220	... .. relled on... 10 C W N 934 = 4 C L J 149 = 83 C 1101 818
15 C 58, Janki Kunwar v. Ajit Singh... F... 29 M 1 515	16 C 246, Pareshnath v. Ramjadu... F... 3 C L J 533 910
... .. R... 9 C W N 686 = 1 C L J 408 = 83 C 257 + 607	... .. R... 2 N L R 137 918
15 C 104, Modhusudan Koer v. Rakhal Chunder Roy... R... 2 N L R 87 .. 258	16 C 252, Benodi Coomaroo Dossee v. Souda... F money Dossee ... 29 M 497 .. 581
15 C 152, In the matter of Southekal Krishna Rao... R... 2 A L J 811 = A W N (1906) 268 80	... .. F... 29 M 500 608
... .. R... 3 A L J 811 = A W N (1906) 268 .. I	16 C 280, Ram Chander Dutt v. Dwarkanath Bysak... R... 2 N L R 25 .. 708
15 C 242, Ashanulla v. Collector of Dacca... ex- plained and D... 3 C L J 545 = 10 C W N 986 = 83 C 1923 568	16 C 426, Shama Das v. Hurbuns Narain... R & F... 10 8 P R 1906 = 45 P L R 1906 310
	... .. R... 2 N L R 179 VI

* This is a mistake for 14 C 740.

† In Col. 607, this is wrongly printed as 33 C 527.

16 C 482, Bindessuri Pershad Singh v. Jankee Pershad Singh... R ...2 N L R 81 ... 286	17 C 680, Boidya Nath Adya v. Makhan La Adya... Appl ...8 C L J 257 = 10 C W N 564 ... 311 & 312
16 C 540, Bunseedhar v. Sujat Ali... D ...4 C L J 246 ... 682	----- R ...8 Bom. L R 885 ... 47 & 370
16 C 559, Bhasha Rabidat Singh v. Indar Kunwar... Refd. to ...16 M L J 22 = 29 M 161 ... 408	17 C 695, Gopal Chunder Das v. Umesh Narain Chowdhury... R ...10 C W N 787 ... 363
16 C 596, Shewlariat Koer v. Nirpat Roy... R ...4 C L J 138 = 83 C 837 ... 95	-----, Gopal Chunder Das v. Umesh Narain Chowdhury... R ...10 C W N 952 = 93 C 1010 ... 364
16 C 638, Mohesh Chandra Chattopadhyay v. Umatara Debi... F ...4 C L J 119 ... 96	17 C 711, Panchanun Bundopadhyay v. Rabia Bibi... F ...A W N (1905) 180 = 28 A 51 ... 240
16 C 642, Kristo Bullav v. Kristo Lal... Refd. to ...10 C W N 270 ... 82	17 C 826, Nil Madhab Sikdar v. Narottam Sikdar... F ...A W N (1906) 60 = 8 A L J 196 = 28 A 400 ... 571
----- D ...38 C 580 ... 82	17 C 875 = 17 I A 65, Hemant Kumari v. Brojendra Kishore... F ...4 C L J 198 ... 174
16 C 698, Srinath Das v. Khettor Mohun Singh... R ...3 O C 147 (B) ... 619	17 C 951, Macmillan v. Suresh Chunder Deb... Distd ...29 M 292 ... 11
17 C 148, Chowdhry Jogessur v. Khettor Mohun... F ...3 C L J 52 ... 902	17 C 963, Tarini Churn Sinha v. Watson and Co... R ...33 C 15 ... 538
17 C 196, Debiruddi w. Abdur Rahim... Distd ...3 C L J 201 ... 559	18 C 10, Watson and Co v. Ram Chand... F ...4 C L J 254 ... 363
17 C 268, Raghunandan Pershad v. Bhugoo Lall... D ...33 C 689 ... 631	18 C 10, Watson & Co., v. Ramchund Dutt... Refd. to ...A W, N (1905) 233 = 28 A 161 ... 542
17 C 272, Krishna v. Pancharam... R ...2 N L R 123 ... 522	18 C 10 = 17 I A 110 ----- R and D 33 C 1201 ... 542
17 C 291 = 16 I A 233, Pertab Chunder v. Mahendranath Purkait... R ...4 C L J 198 ... 174	18 C 23 = 17 I A 122, Durga Chowdhraim v. Jowahir Singh... R ...4 C L J 198 ... 174
----- R ... 8 Bom L R 553 = 30 B 426 ... 498	18 C 83, Jogir Ahir v. Bishen Dayal Singh... F ...2 N L R 23 ... 852
17 C 297, ----- R ...8 Bom L R 761 ... 687	18 C 151, Jogendra Bhupati v. Nityanund... R ...16 M L J 339 = 1 M L T 272 = 29 M 453 ... 480
17 C 326, Lala Kerut Narayan v. Palukdhari Pandey... R ...4 C L J 138 = 93 C 837 ... 95	18 C 182, Kishen Pershad Panday v. Tilukdhari Lall... R ...33 C 1923 ... 577
17 C 347, Mungni Ram v. Gursahi Nand... R ...4 C L J 112 ... 52	18 C 231, Shooshoe Bhuvan v. Gobind Chander... F ...3 C L J 389 = 10 C W N 535 ... 524
17 C 427, Ganakdhary Sukul v. Janki Koer... D ...78 P R 1906 = 150 P L R 1906 ... 586	18 C 255, Ugra Lall v. Radha Persad Singh... R ...11 C W N 116 ... 97
17 C 518, Manikchand v. Jagat Settani... R ...2 N L R 98 ... 190	18 C 333, Sheo Sahay Panday v. Ram Rachia Roy... Distd ...33 C 607 = 4 C L J 320 = 11 C W N 62 ... 86
----- Distd ...4 C L J 357 = 11 C W N 12 = 33 C 1806 ... 472 & 473	18 C 385, Surendra Nandan v. Sailaji Kant Das Mahapatra... Appr ...10 C W N 921 = 4 C L J 171 = 16 M L J 276 = 1 M L T 260 = 8 Bom L R 700 = 3 A L J 702 = 29 M 382 (P.C.) ... 470
17 C 584, Mahabeer Pershad v. Moheswar Nath Bahui... Refd. to ...1 M L T 28 = 16 M L J 69 = 29 M 200 ... 489	18 C 414 (P.C.), Muhammad Newaz Khan v. Alam Khan... R ...9 O C 205 (B) ... 290
17 C 620-9, Suddasook v. Ramchander... R ...10 C W N 566 ... 153	----- Refd. to ... 2 A L J 450 = A W N (1905) 165 = 28 A 21 ... 29
17 C 670, Hamidunnessa Bibi v. Zohiruddin Sheik... F ...7 Bom L R 684 = 90 B 122 ... 649	

18 C 414=18 I A 78, Muhammad Nawaz Khan v. Alam Khan... R ... 4 C L J 162=33 C 881 611	20 C 254, Rajanikant Nag v. Jogeshwar Singh... F ...4 C L J 119 96
18 C 556, Baij Nath Tewari v. Sheo Sahoy Bhagut... D ... 3 C L J 165 765	20 C 296=19 I A 208, Sarat Chunder v. Gopal Chunder... R and F ...4 C L J 158... .. 6
18 C 681, Peary Mohun v. Ananda Charan... F 3 C L J 339=10 C W N 585 524	20 C 328, Khalilul Rahman v. Gobind Pershad... Dis ...1 M L T 28=16 M L J 69=29 M 200 489
*18 C 806, Ram Narain v. Ram Chunder... dis-sented from ... 10 P R 1906 349	20 C 373=21 I A 85, Greender Chunder v. Troylockhonanth... R ...4 C L J 323 457
†18 C 1888, Kailas Chundra Ghose v. Fulchand Jaharri... Diss ...1 M L T 145=16 M L J 872=29 M 426 (F. B.) 887	20 C 397, Sajedur Raja v. Baidya Nath Deb... D and disapproved ...10 C W N 867=33 C 905 219
19 C 1, Mackenzie v. Haji... R ... 11 C W N 57 78	20 C 433, Saodamini Dasi v. The Administrator-General of Bengal... R ...21 T L R 56 518
19 C 4, Gunga Pershad v. Jawahir Singh... R ... 4 C L J 246 446	20 C 508, Fatima Bibi v. Deb Nath Shah... Appr ...4 C L J 431=11 C W N 84=1 M L T 360 340
19 C 17, Chintamani Dutt v. Rash Behari Mondal... Refd. to ... 10 C W N 270 82	20 C 609, Kameswar Prasad v. Bhikhan Narain Singh... F ...4 C L J 238=33 C 1065 76
... .. D 82	20 C 805, Kasinath Das v. Sadasiv Pattnik... F ... 135 P R 1906 226
33 C 580 82	20 C 884, Lamlail Arif v. Muhammad Ghaus... R U B R (1905), Evidence 7 440
19 C 123, Hanuman Kamat v. Hanuman Munder... R ... 2 N L R 174 613	... .. D 741
19 C 201, Chohen v. Nursing Dass Auddy... F ... 2 N L R 68 846	20 C 843, Raghu Nath v. Nil Kanth... R ...26 P R 1906=20 P L R 1906 345
19 C 236 (P. G.), Bihari Lal Madho Lal... R ... 9 O C 104 505	20 C 906, Chuekkan Lal v. Lolit Mohan... D ... 4 C L J 568 599
... .. R 516	21 C 8, Hari Nath Chatterjee v. Mothur Mohun Goswami... F ...A W N (1905) 270=2 A L J 849=28 A 241... .. 504
19 C 249=19 I A 1, Ramratan v. Nandu... R ... 4 C L J 198 174	21 C 19, Sahdeo Pandey v. Ghasiram Hyawal... Distd ...2 A L J 640=A W N (1905), 241=28 A 193 911
19 C 253=19 I A 48, Lachmeswar Singh v. Manowar Hossein... R & D ...33 C 1201 542	21 C 66 (P. G.), Tasadduk Rasul Khan v. Ahmap Hussain... R ...9 O C 289 766
19 C 358, Land Mortgage Bank v. Sudurudeen Ahmed... F ...4 C L J 238=33 C 1065 76	21 C 259, Kalu v. Latu... R ...3 C L J 188 589
19 C 541, Haripria Debi v. Ram Churn... F ... 2 N L R 45 220	21 C 265, Kamini Kant Roy v. Ram Nath Chuckerbutty... R ...9 O C 164 274
19 C 615, Lallesor Babui v. Janki Bibi... not F ... 9 O C 224 221	21 C 383, Satyendra Nath Thakur v. Nilkantha Singha... R ...33 C 786 878
... .. R 222	21 C 430, Dakhyani Debea v. Dohgobind Chowdhry... F ...21 T L R 127 823
†19 C 629, Mahabir Pershad Singh v. Hurrihur Pershad Narain Singh... R ...9 C W N 686=1 C L J 408=33 C 257 607	21 C 463, Jaggannath Churn v. Akali Dassia... Distd ...2 C L J 590=32 C 1072=10 C W N 505... .. 204 and 205
19 C 683, Prosunno Kumar Sanyal v. Kali Das Sanyal... R ...U B R (1905) Civ Pro 36 242	21 C 473, Mohabir Prasad Singh v. Adhikary Kunwar... R ...33 C 1353 577
20 C 116, Bikain Mia v. Shuk Lal Podder... R ... 2 N L R 158 655	

* This is a mistake for 18 C 86.

† This is a mistake for 18 C 18.

‡ In Col. 607, this is wrongly printed as 33 C 527.

21 C 496 (P.C.), Abdul Wahid Khan v. Saluka Bibi...R...9 O C 86 (B) .. 136	..R... .. 484
9 O C 331 .. 707	
21 C 504=21 I A 39, Lukhi Narain v. Jadu Nath...R...4 C L J 198 .. 174	
21 C 550, Rameswar Mahton v. Dilu Mahton ... <i>Disa</i> .. 46 P R 1906=94 P L R 1906	.. 484
*21 C 618, Ajudhia Pershad v. Baldeo Singh ..R...2 N L R 187.. .. 918	
21 C 626, Bejoy Chand Mahatab Bahadur v. Kristo Mohini Dasi...F...33 C 693	.. 601
21 C 666 (P.C.), Abdul Razzak v. Aga Mahmudjafar...R...9 O C 246 .. 647	
21 C 697, In the goods of Kaminey Money Bewah...F...10 C W N 1085 .. 483	
21 C 818, Ajudhia Pershad v. Baldeo Singh...R...11 C W N 156 .. 625	
21 C 866, Taqui Jan v. Obaidulla...D...1 M L J 113 .. 628	
21 C 989, Raja Singh v. Kooldip Singh...F...3 C L J 181 .. 204	
21 C 997=21 I A 168, at p 166, Umrao Begam v. Irsad Husain...F...3 C L J 86 (P.C.)=10 C W N 230=1 M L T 6=15 M L J 77=28 A 215 .. 744	
22 C 8, Sheo Churn v. Ramanundan...R...3 C L J 119 .. 284	
22 C 25, Tokhan Singh v. Udwant Singh... <i>Disa</i> ...109 P R 1906 (F. B.) .. 249	
22 C 214, Hemanta Kumari Debi v. Jagadindra Nath Roy... <i>Exp & D</i> ...3 C L J 391=33 C 683 .. 90	
22 C 425, Dwarka Nath Misser v. Barinda Nath Misser...F...47 P R 1906 .. 278	
22 C 467, Ram Narain Singh v. Lala Raghunath Sahai...R...48 P R 1906 (F. B.)=104 P L R 1906 .. 759	
22 C 575, Kaylash Chandra De v. Tarak Nath Mandal ...R...11 C W N 101+... 87	
22 C 609, Lachmanlal Chowdhri v. Kanhayalal Mowar...R...2 N L R 98 .. 190	
22 C 619 (P.C.), Abdul Fata Mahomed Isahak v. Basamaya Dhur Chowdhuri... <i>Disa</i> ...8 Bom L R 245 .. 652	
22 C 619, Abdul Fata Mahomed v. Basamaya...R...2 N L R 158 .. 655	
22 C 767, Jogadanund v. Amrita Lal... <i>Refd to</i> ...3 C L J 293=33 C 487 .. 545	
22 C 784, Surrut Coomari Dassas v. Radha Mohun Boy... <i>Disd</i> ...8 C L J 109... 46	

22 C 843=22 I A 94, Mohunt Bhagaban Roghunundan... <i>relied on</i> ...4 C L J 323	.. 484
22 C 859, Aubhoyesarry Dabee v. Gouri Sunkur Panday...F... A W N (1905) 189=2 A L J 479=28 A 58 ... 920	
22 C 864, Abilakh v. Bhekhi...R...4 C L J 323	.. 484
22 C 981, Tara Prosad Roy v. Bhobodeb Roy...R...11 C W N 156 .. 625	
22 C 981, Chintamony Dassi v. Raghonath Sahoo...R...2 N L R 179 .. VI	
22 C 989, Raja Singh v. Kooldip Singh...R... A W N (1906) 171=3 A L J 556=28 A 655 .. 246 & 247	
23 C 15, Ganga Baksh v. Jagat Bahadur Singh ...F...8 Bom L R 252 .. 644	
23 C 115, Jagarnath Singh v. Budhan... <i>Disa</i> ...82 P R 1906 .. 318	
23 C 196, Anuanda Mohun Roy v. Hara Sundari...R...3 C L J 95 .. 629	
23 C 228 (P.C.), Kishori Mohan Roy v. Ganga Bahu Debi...F...50 P R 1906 .. 692	
1906 ... 702	
23 C 290, In the matter of Joshy Assam... <i>Appr</i> ...1 M L T 347 .. 671	
23 C 366, Samar Dasudh v. Juggul Kishore Singh...R...4 C L J 181=8 Bom L R 705=30 B 523=1 M L T 301 (P.C.) ... 544	
23 C 415, Bharasi Lal Chowdhry v. Sarat Chunder Dass...R...7 Bom. L R 821=30 B 220 ... 379 & 386	
23 C 425, Mahamaya Dasya v. Nitya Hari Das Bairagi...F...29 M 329 .. 852 & 858	
23 C 450, Mahomed v. Khawas Ali Khan...D...190 P L R 1905=1 P R 1906 .. 790	
23 C 690, Ragunandan v. Kallydutt...F...3 C L J 240=10 C W N 209 ... 638	
23 C 728, Upadhya Thakur v. Persidh Singh ...D...33 C 11 .. 370	
23 C 738, Janardan Debey v. Ram Dhone Singh ...R...1 M L T 268(F. B.)=16 M L J 479 .. 280	
23 C 738 (F.B.), ...R...2 N L R 179 .. VI	
23 C 829, Banomali Rai v. Prosunno Narain Chowdhry ... <i>relied on</i> ...10 C W N 978=33 C 1158 .. 183	
23 C 851, Pramatha Nath Sandal v. Dwarka Nath Dey...R...9 O C 315 .. 777	
23 C 908, In the goods of Nunda Lal Mullick ...F...3 C L J 260 .. 35	

*This is a mistake for 21 C 818.

is a mistake for 11 C W N 110.

23 C 962, Kali Charan Pal v. Rasik Lal Pal ... <i>altered & F...</i> 8 P R 1906=109 P L R 1906 185	24 C 608, Raj Lakhi v. Debendra... <i>Refd to...</i> 8 C L J 260... .. 85
24 C 62, Ishan Chaudar Sircar v. Beni Madhab Sarkar... <i>Appl.</i> 10 C W N 240 ... 240	24 C 711, Kailash Mondul v. Baroda Sundar ¹ Dasi... <i>F...</i> 107 P R 1906 ... 820
24 C 62, Ishan Chunder v. Beni Madhub... <i>Appl</i> ...11 C W N 168 ... 242, 243	24 C 715, Hari Mohan v. Babur Ali... <i>R...</i> 3 A L J 504=A W N (1906) 218=28 A 722 242
24 C 77, Sheo Shankar Gir v. Ram Showak Chowdhri... <i>R...</i> 9 C W N 686=1 C L J 408=88 C 257* ... 607	24 C 759, Uma Sundari v. Hindu ² Bashini ... <i>applied...</i> 4 C L J 566 ... 302
24 C 178, Kewal Kishan Singh v. Sookhari... <i>F...</i> 88 C 1282 874	24 C 778, Ahddhar Chandra Dass v. Lall Mohun Das... <i>R...</i> 8 Bom L R 955 ... 69
24 C 178, 178, Olive Jute Mills v. Ibrahim Arab ... <i>R...</i> 38 C 547 855	... ..<i>R...</i> 9 O C 281 688
24 C 212, Kalinath Chakravarti v. Upendra Chandra Chowdhry ... <i>D...</i> 8 C L J 343=38 C 531 91	24 C 831, Ishan Chandra Hazra v. Ramaswar Mondal... <i>R...</i> 9 O C 889 ... 821
24 C 256, Mohini Mohan Ray v. Promoda Nath Ray ... <i>R & F...</i> 3 C L J 816 ... 156	24 C 894, 24 I A 76, Lalit Mohun Singh Roy v. Chukkan Lal Roy... <i>F...</i> 3 C L J 502= 10 C W N 605 (S.B.)=88 C 947* ... 21
24 C 201, Surno Moyee Dabi v. Dakhina Ranjun Sanyal... <i>R...</i> 182 P R 1906...259 & 259	... ..<i>R...</i> 9 O C 119 (B) 520 & 521
24 C 806, The Secretary of State for India in Council v. Nupchand Poddar ... <i>F...</i> A W N (1906) 101=3 A L J 320=28 A 552 56	24 C 865=24 I A 60, Debi Porahad v. Joyuath ... <i>Appl.</i> 4 C L J 970=11 C W N 85 840
24 C 406, Lala Ramjevan Lal v. Dal Koer ... <i>F...</i> 8 C L J 502=10 C W N 695 (S.B.)=38 C 927† 21	24 C 887, Koowar Singh v. Gour Sunder Per- shad Singh... <i>Refd. to...</i> 10 C W N 508 73
24 C 418, Sajedur Raja Chowdhuri v. Gour Mohun Das Baishnav... <i>Appr...</i> 2 A L J 591=A W N (1905) 208=28 A 112 205, 206	25 C 1, Madhu Sudan Singh v. E G Rooke... <i>R &</i> <i>Distd...</i> 9 C W N 636=1 C L J 408 33 C 257† 607
24 C 469, Satarjit Pertap Bahadur Sahi v. Dul- hin Gulab Koer... <i>R...</i> 2 N L R 81...286	† 25 C 39 (P.G.), Rameswar Koer v. Mahomed Medhi Hassan Khan... <i>R...</i> 2 N L R 162 (P.G.) 606
24 C 569, Srihari Banerjee v. Khitish Chandra Roy Bahadur ... <i>R...</i> 10 C W N 820 209	25 C 90, Perma Roy v. Kishan Roy... <i>R...</i> 4 C L J 181=8 Bom L R 705=30 B 523=1 M L T 801 (P.G.) 544
... .. <i>D...</i> 21 T L R 127 823	25 C 97, Ramu Deka v. Brojo Nath Saikia... <i>F...</i> 9 O C 82... .. 301
24 C 584, Jogendra Nath v. Prico... <i>R...</i> 9 O C 275 281	25 C 133, Akikunnissu Bibee v. Roop Lal Das ... <i>F...</i> 16 M L J 545... .. V
24 C 589=1 C W N 845, Amrito Lall v. Surno Moyee... <i>R...</i> 11 C W N 65 ... 519	25 C 136, Kassiswar Mukopadhya v. Mohendra Nath Bhandari... <i>R...</i> 10 C W N 820 209
24 C 640, Girish Chunder v. Dwarka Nath ... <i>D and doubted...</i> 10 C W N 551=8 O L 576=88 C 618 597	... ..<i>F...</i> 21 T L R 127 828
24 C 646, Bhoba Tarini Debye v. Peary Lal Sanyal... <i>F...</i> 3 C L J 502=10 C W N 695 (S.B.)=88 C 927†† ... 21	25 C 144, Kali Prasaanno Ghose v. Rajani Kant Chatterjee... <i>R...</i> 88 C 418 ... 287
	25 C 146, Acha Mian Chowdhry v. Durga Churn Law... <i>R...</i> 4 C L J 188=88 C 887 95

* In Col. 607 this is wrongly printed as 38 C 527.

† This is a mistake for 38 C 947.

†† In Col. 21, this is wrongly printed as 88 C 957.

* In Col. 21, this is wrongly printed as 38 C 957.

† In Col. 607, this is wrongly printed as 88 C 527.

†† This is a mistake for 26 C 39.

25 C 155; Mahomed Hamidullah v. Tahurennisa, Bibi...D...8 C L J 163 ... 229	26 C 74 (77), Corporation of Calcutta v. Bhu- pati Roy Chowdhry...Refd to...3 C L J 169=10 C W N 289=33 C 306
25 C 194=1 C W N 638=24 I A 177 (P.C.), Manmatha Nath Mitter v. Secretary of State for India in Council...D...10 C W N 1044=4 C L J 843=33 C 1230... ... 195	26 C 78, Tofaluddi v. Mahai Ali...Appe...1 M L T 416 ... 892
25 C 216, Abdul Latif Moonshih v. Jadub Chan- dra Mitter...F...11 C W N 116... 97	...R and F... 4 C L J 216=38 C 985 ... 924
25 C 254, Sarnomoyee Bewa v. Secretary of State...F...10 C W N 1095 ... 483	26 C 81 (100)=25 I A 161, Muhammad Imam Ali Khan v. Husain Khan...R...4 C L J 323 ... 457
25 C 315, Kalipado Mukerjee v. Dino Nath Mukerjee...R...9 O C 281 ... 449	26 C 101, Rajendro Nath Sanyal v. Jani Meah ...R...8 Bom L R 757=30 B 623... 228
25 C 336, Modhusudan Nath Tewari v. Hiru Ram Pandey...F...2 N L R 101...874	26 C 114, Bishun Churn Roy Chowdhry v. Jogendra Nath Roy...F...A W N (1905) 200=2 A L J 667=28 A 95 ... 208
25 C 331 (F.B.)=2 C W N 375, Peary Mohun Mukerjee v. Gopal Paik...Distd...10 C W N 216 ... 91	26 C 164, Sheodeni Tewari v. Ram Saran Singh...F...38 C 118... 922
25 C 371, Raicharan Ghose v. Kumud Mohun Dutta Chowdhury...R...11 C W N 110* ... 97	...R...38 C 283 ... 922
25 C 371, Rai Charan Ghose v. Kumud Mohan Dutt Chowdhry...Dist...16 M L J 41= 1 M L T 25=29 M 193 ... 207	26 C 194, Mahomed Nasim v. Kasi Nath Ghose ...F...3 C L J 387 ... 799
—, Koylas Chandra De v. Tarak Nath Mandal...relled on...10 C W N 529 ... 815	26 C 246, Girindra Nath v. Bejoy Gopal...R and F...4 C L J 316=38 C 985 ... 924
25 C 649, Foolcoomary v. Woodoy Chunder ...R...3 C L J 119 ... 284	26 C 324, Bhubon Mohun Pal v. Nunda Lal Dey...R...21 T L R 206 ... 321
25 C 602=2 C W N 589, Amrito Lall v. Surho Moyee...R...11 C W N 65 ... 519	26 C 349, Lutchmanen Chetty v. Siva Prokasa Modeliar...D...69 P R 1906=118 P L R 1906 ... 492
25 C 718, Ishwar Chandra Dutt v. Haris Chan- dra Dutt...R...U B R (1935) Civ. Pro. 36 ... 242	26 C 409, Pyari Mohun Bose v. Kedar Nath Roy...D...69 P R 1906=118 P L R 1906 ... 492
—, —...F...44 P R 1906 ... 250	—, —...F...29 M 302 ... 540
25 C 757, Mahomed Wahiduddin v. Hakimian ...R...9 O C 205 (B) ... 290	26 C 414, Bishambhur Haldar v. Bonomali Haldar...Distd...3 C L J 280 ... 100
—, —...R... A W N (1906) 136=28 A 621 ... 293	26 C 428 (F.B.)=8 C W N 266, Dwarka Nath Roy v. Ram Chand Aich...R...10 C W N 820 ... 209
25 C 805, Sarat Chunder Roy Chowdhry v. Chandra Kanta Roy...R...8 A L J 579 (F.B.)=A W N (1906) 235=1 M L T 242 ... 30	—, —...D...21 T L R 127 ... 823
25 C 845=L R 25 I A 354, Sukha Moni v. Nshan Chandra...R...10 C W N 551=3 C L J 576=33 C 613 ... 592	26 C 449, Chundi Charan Mandal v. Banke Behary Lal...D...11 C W N 116... 97
26 C 1 (P.C.), Kadir Moidin v. Nepean...R...9 O C 18 ... 901	26 C 653, Girish Chunder v. Jatadhari...D...4 C L J 390 ... 418
26 C 39, Rameswar Koer v. Mahomed Mohdi Hussein Khan...R...29 M 17=16 M L J 183 ... 706	26 C 677, Nithaji Behari Saha Parmanick v. Hari Govinda Saha...F...2 N L R 101 ... 874
	*26 C 777, Durga Charan Mandal v. Kali Pra- sanna Sarkar...R...157 P L R 1906...921
	26 C 832, Hem Chandra Chowdhry v. Kali Prosunno Bhaduri...R...10 C W N 818 ... 77
	26 C 845, Raj Narain Das v. Shama Nando Das Chowdhry...F...185 P R 1906...226

*In Col. 87, this is wrongly printed as 11 C W
N 101.*

† 25 A 35 is a mistake for 25 I A 95.

*This is a mistake for 26 C 277.

26 C 965, Swija Narain Mukhopadhaya v. Pratap Narain Mukhopadhaya...D...3 C L J 541 648 & 644	28 C 78, Bhugwanbutti Chowdhurani v. Forbes ... relied on ...10 C W N 529 ... 815
27 C 7, Mauladan v. Rughunandan Pershad Singh...D...21 T L R 119 ... 359	28 C 90, Nath Singh v. Damm Singh... Distd ... 93 C 607 = 4 C L J 320 = 11 C W N 62 86
27 C 11, Rajib Panda v. Lakshan Mahapatra ... Distd ...109 C W N 422 ... 493	28 C 122, Bholanath v. Prafulla Nath ... R ... 3 C L J 240 = 10 C W N 209 ... 811
27 C 44, Rajnarain Bhadur v. Ashutosh Chuckerbutty... R ...9 OC 119 (B)...520 & 521	28 C 139, Isham Chandra v. Gonesh Chandra ... F ... 4 C L J 490 ... 718
27 C 156, Beni Pershad v. Dudhnath... Appl ... 4 C L J 399 659	28 C 177, Nalinakshya v. Mafukshar... D ... 3 C 188 296
27 C 180, Karnaala Kant Sen v. Abdul Barkat... R ...9 C W N 989 = 38 C 92 ... 713	28 C 205, Pentry Mohan Mukherjee v. Badul Chand Bagdi... Distd ...3 C L J 155...84
27 C 221, Udit Narain Singh v. Golab Chand Sahoo... R & F ...3 C L J 316 ... 156	28 C 223, Madan Mohun v. Rajab Ali... R ... 4 C L J 198 363 & 364
27 C 229, Sheo Nath Saran v. Sukh Lal Singh ... F ...A W N (1905) 171...2 A L J 493 = 23 A 25* 284	—... R & D ... 93 C 1201 542
27 C 540, Fakira Pasban v. Bebee Azimunessa ... D and doubted ...10 C W N 551 = 3 C L J 576 = 33 C 613 ... 597	28 C 238, Jahar v. Kamini Debi ... R ...9 C 281 449
27 C 649, Rajnarain Bhaduri v. S M Kalyani Dabee... R ...9 OC 119 (B)...520 & 521	28 C 311, Gopal Chandra v. Ram Chandra ... R ...3 C L J 15 = 10 C W N 510 = 33 C 315 509
—... R ... 8 Bom L R 482 522	28 C 324, Mahesh Chandra Dasa v. Jamir-uddin Mulla... R ...9 OC 80 ... 303
27 C 705, Somesh v. Ram Krishna Chowdhury ... F ...3 C L J 533 910	28 C 465, Surja Kumar Dutt v. Arim Chander Roy... F ...9 OC 269 (B)* ... 590
—... R ...2 N L 137 918	28 C 471, Kurban Ali v. Jafer Ali... F ...3 C L J 133 93 & 94
27 C 709, Sariatula Molla Raj Kumar Roy ... D ...3 C L J 95 629	28 C 517, Lala Suraj Prasad v. Golab Chand ... R ...3 C L J 12* 487
27 C 768, Jaggot Singh v. Brij Nath... D ...1 M L T 101 5	—... F ... 2 N L R 90 707
27 C 827 (F.B.), Sriah Chunder v. Nachin Kazi ... D ...4 C L J 402 853	—... R ... 2 N L R 116 707
27 C 943, Radhamoni Debi v. Collector of Khulna... F ...3 C L J 316 ... 156	*28 C 540, Fakera Pasban v. Bibi Azimunnissa ... D ...69 P R 1906 = 118 P L R 1906 492
27 C 951, Girish Chander Lahiri v. Sasi Sekhreswar Roy ... F ...33 C 329 ... 535	28 C 608, Collector of Dacca v. Jagat Chander Goswami ... R ...3 A L J 717 = A W N (1906) 289 485
27 C 1023, In the matter of Purna Chunder Pal Mukhtar... Dias ...2 A L J 811 = A W N (1906) 268 30	28 C 676, Ashutose Nath v. Abdool... R ...11 C W N 48 602
—... Dias ...3 A L J 811 = A W N (1906) 268 I	28 C 734, Pasupathi Nath Bose v. Nanda Lal Bose... R ...3 C L J 29 ... 52
28 C 17, Woomes Chandra Maitra v. Baroda Das Maitra... R ...167 P R 1906 820	—... R & F ...3 C L J 67 = 33 C 927 300
28 C 70, Rahiman v. Elahi Bakhsh ... Dias ... A W N (1906) 89 = 8 A L J 814 = 28 A 473 468	29 C 43 (51), Rameswar Prosad Singh v. Rai Sham Kishen... R ...3 C L J 188 ... 910
28 C 78, Bhugwanbutti Chowdhurani v. Forbes ... Dias ... 16 M L J 41 = 1 M L T 25 = 29 M 195 207	29 C 73, Ram Taruck Hazra v. Dilwar Ali... relied on ...10 C W N 347 = 3 C L J 235 = 33 C 451 102
	—... F ...3 C L J 235 = 10 C W N 347 = 33 C 451 ... 548

*This is a mistake for 28 A 35.

*This is a mistake for 27 C 540.

29 C 167=29 I A 51 (P.C.), Ghulam Khan v. Muhammad Hassan...R...38 C 498	30 C 257, Toonya Ram v. East India Railway Company...F...2 N L R 125 ... 56
... ..F...38 C 899...288	30 C 276, Mohendranath Mokerjee v. Kali Prashad Johuri...R...21 T L R 110 ... 359
... ..Expl...2 A L J 450	30 C 291, Jagadindra Nath Roy v. Secretary of State for India...F...3 C L J 316...799
=A W N (1305) 165=28 A 21 ... 292	30 C 468, Shih Dass Dass v. Kali Kumar Roy ...R...38 C 288 ... 922
29 C 167, Ghulam Khan v. Muhammad Hassan ...F...38 C 11 ... 370	30 C 501, Mohanmad Ali Amjad Khan v. Secretary of State for India...F...58 P R 1906=103 P L R 1906 ... 66
... ..Ghulam Jilani v. Muhammad Hassan ...R...9 O C 205 (B) ... 290	30 C 508, Mitta Kumari Dass v. Puddomoni Bewah...Distd...16 M L J 281+29 M 511 ... 582
29 C 167=29 I A 51=6 C W N 226, Ghulam Jilani v. Muhammad Ahmed...consolidated...10 C W N 609 (F.B.) 3 C L J 450=38 C 756 ... 291	30 C 539, Mohorri Bibee v. Dharmodas...Refd. to...3 C L J 280 ... 85
29 C 200, Rajamoyee Dass v. Troylukho Mohiny Dass...F...3 C L J 224 ... 863	30 C 635 (P.C.), Rahimuddin v. Rewal...R...110 P L R 1906 ... 140
29 C 267, Parbati Nath Dutt v. Rajinohna Dutt...Distd...38 C 693 ... 601	... ..R...21 P R 1906 ... 758
29 C 478, Moyka Bibi v. Bankee Behary...Refd. to...3 C L J 260 ... 85	30 C 710, Ibrahim Mullick v. Ramjadu Rakshit ...Expl. & D...3 C L J 298 =38 C 487 ... 267
... ..Distd ...4 C L J 485=11 C W N 71...641, 642	30 C 725 (P.C.), Balabux v. Rukhmabai...R...9 O C 216 ... 492 & 498
... ..R...9 O C 97... ... 649	30 C 738, (P.C.), Balkishen Das v. Ram Narain Sahu...R...9 O C 216 ... 492 & 498
... ..ex-plaind...D...4 C L J 578 ... 649	30 C 755, Hari Kisson Bhagat v. Velat Hossein ...R...38 C 1079 ... 598
... ..Ap-Pr. and Fell...1 M L T 438 ... 885	30 C 761 (769), Troylukya Nath Bose v. Fyosi Prokash Nundi...disapproved...3 C L J 210=10 C W N 239 ... 638
29 C 500, Soahi Bhtuan v. Ganesh Chundr ...R...4 C L J 198 ... 363 and 364	30 C 783, Kuli Charan Ghosal v. Ram Chandra Mandal...R...11 P L R 1906 ... 782
29 C 518, Secretary of State for India v. Krishnamoni Gupta...R...3 C L J 316 ... 156	... ..D...27 P R 1906 ... 787
... ..R...3 A L J 567=A W N (190C), 284=28 A 780 ... 740	30 C 901, Fazilatunnessa v. Ijaz Hassan...R...4 C L J 198 ... 363 & 364
29 C 581, Jagan Nath Khan v. Brojo Nath Pal ...R...A W N (1906), 269=3 A L J 815 ... 680	... ..D...A W N (1906), 221 ... 864
29 C 749, Shambati Koeri v. Jago Bibi...F...8 Bom L R 781 ... 651	30 C 900=7 C W N 864, Bejoy Gopal Mukerjee v. Nilratan Mukerjee...Distd...9 C W N 686=1 C L J 408=38 C 257* ... 607
... ..R...4 C L J 41=38 C 861 ... 897	30 C 1021, Walian v. Banke Behari Pershad Singh...Distd...2 A L J 615=A W N (1905) 229=28 A 187... 484
29 C 871, Nundo Kumar Nasker v. Banomali Gayan...R...9 O C 839 ... 821	31 C 23, Narshing Das v. Ajodhya Prosad Sukul...Refd to...29 M 44...176 & 177
30 C 1, Shao Rutton Singh v. Net Lal Sahu ...R...182 P R 1906 ... 258, 259	31 C 57 (P.C.), Webb v. Macherson...R...9 O C 284 ... 610
30 C 20, Agin Bindh v. Mohan Bikram Shah ...F...11 C W N 48 ... 602	
30 C 21 (P.C.), Ezra v. The Secretary of State ...R...115 P R 1906 ... 58	
30 C 22, Iswar Chunder v. Satish Chunder...D ...4 C L J 198 ... 174	
30 C 231 (P.C.), Ram Pershad Singh v. Lakshpati, Koer...R...9 O C 216...492, 498	

*In Col 607, this is wrongly printed as 38 C 527.

† This is a mistake for 31 C 203.

31 C 57, (P. C.) Webb v. Macperson...R & Appl... 29 M 305 ... 618 ...R...10 C W N 276= 38 C. 410=4 C L J 102 ... 699 & 700	32 C 253 (F. B.)=9 C W N 81, Bibee Tulsiman v. Harihar Mahto...F...8 Bom L R 803 ... 232
31 B 228, Krishna Prasad Roy v. Bepin Behari Roy...F...3 C L J 381 ... 256	32 C 257, Harihar Ojha v. Dasarathi Mitra...F ... 8 Bom L R 675... 605
31° C 258, Debendranath Biswas v. Hem Chunder Khy...D...31 P R 1906=193 P L R 1906 ... 33	32 C 265, Khetrapal Singh Roy v. Shyama Prasad Barman...F...16 M L J 545 ... V
31 C 259†, Gopal Lal v. Benarasi Pershad Chow- dhry...R...21 T L R 256 ... 196	32 C 332, Jotindra Mohan Tagore v. Mahomed • Basir Chowdhry...Refd. to by Maclean, C.J. ...10 C W N 274 ... 263
31 C 365, Qulab Khan v. Abdul Wahab Khan • ...Appr...46 P R 1906=94 P L R 1906 ... 372	32 C 401, John Smidt v. Reddaway...F...4 C L J 268=10 C W N 107 ... 877
31 C 385, Kokil Singh v. Kdal Singh...R...21 T L R 206 ... 321	32 C 542, Nibaran Chandra Chowdhry v. Chi- ranjib Prasad Bosa...R...132 P R 1906 ... 258 & 259
31 C 448, Saroda Prasad Roy v. Mahananda Roy...D...4 C L J 56 ... 492	32 C 605=7 Bom L R 422 (F.C.), Ezra v. The Secretary of State for India...Refd. to...7 Bom L R 697=30 B 275... 62
31 C 480, Dino Bundhu Nundy v. Hari Mati • Dassees...R...21 T L R 206 ... 321	32 C 683=9 C W N 567, Ramteswar Singh v. Jibender Singh...F...10 C W N 978= 33 C 1158 ... 188
31 C 511, Fulkumari v. Ghan Shyam Misra...R ...2 N L R 87 ... 258	32 C 729, Pran Nath v. Jadu Nath...R and F... 4 C L J 216=33 C 985 ... 924
31 C 722, Bal Kishen v. Khugnu...R...3 C L J 29° ... 52	32 C 746, Mon Mohini (Ghose v. Parvati Nath Ghose...R...3 C L J 205=33 C 425 ... 677
...R & F... 3 C L J 67=33 C 927 ... 300	32 C 749, Alimunnissa v. Sham Charan Roy • ...Diss...9 O C 243 (B) ... 210
31 C 745, Upendra Chandra Singh v. Mohri Lal Marvari...F...1 M L T 145-16 M L J 872=29 M 426 (F.B.) ... 887	32 C 816, Brij Coomaroo v. Salamander Fire Insurance Company...R...33 C 547 ... 355
31 C 822, Coventry v. Tulshi Pershad Narayan Singh...D...95 P R 1906 ... 26	32 C 875=9 C W N 705, Bidyamoyee Debye Chowdhry v. Surya Kant Acharya ...commented on...10 C W N 841 ... 166
31 C 889, Maharaj Bahadur Singh v. Parsh • Nath Singh...R...2 N L R 110 ... 466	32 C 908, Amar Chandra v. Asad Ali Khan ...R...3 C L J 188 ... 589
31 C 849, Aklem-un-nissa Bibi v. Mohammed Hatem...Diss...3 A L J 226 (F.B.)= A W N (1906) 99=28 A 545 ... 471	32 C 1019, Jyoti Kumar v. Haridas...Appr... 11 C W N 57 ... 78
31 C 863, Bibijan v. Sachi Bewah...Appr & F ...3 A L J 690=A W N (1906), 280= 28 A 778 ... 684	32 C 1077=9 C W N 868, Krishna Chandra Saha v. Bhairab Chandra Saha...F...11 C W N 107=33 C 1278† ... 597
...R... A W N (1905) 168=28 A 28 ... 912	32 C 1107, Narendra Lal Khan v. Jogi Hari ... F...33 C 603 ... 601
31 C 932, Amirrulla v. Nazir...Appr...3 C L J 155 ... 84	33 C 200, Hassan Kuli Khan v. Nakchedi...D... 4 C L J 198 ... 174
31 C 1026=8 C W N 923, Juanendra Mohan Chowdhury v. Gopal Das Chowdhry... Appl...10 C W N 216 ... 91	33 C 992, Bhagabati Barmanya v. Kalicharna Singh...R...1 M L T 227 ... 41 I. L. R. Madras Series.
32 C 62, Abinash Chandra v. Harinath Shaha ...R...1 M L T 183=16 M L J 307 (F.B.)=29 M 390 ... 506	1 M 333, Saminada Pillai v. Subba Reddiar... D...29 M 29 ... 560 & 674
...F...3 C L J 224 ... 863	
32 C 115, Hays v. Padamanand Singh...F... 2 N L R 91 ... 819	

† This is a mistake for 31 C 428.

† In Col 597, this is wrongly printed as 33 C. 278.

1 M 385, Subbramaniya Iyer v. Ramachandra Rao... <i>Distd</i> ... 1 M L T 388 ... 115	6 M 308, Subbaraya v. The Sub-Collector of Chingleput... <i>R</i> ... 1 M L T 378=39 M 461 ... 411
2 M 147, Tirumala v. Lakshmi... <i>F</i> ... 3 A L J 320=A W N (1906) 113=28 A 607 ... 792	* 6 M 350, Viraragava v. Krishnasami... <i>R</i> ... 3 P L R 1906 ... 608
2 M 317, Kandasami v. Dorasami Iyer... <i>R</i> ... 29 M 1 ^a ... 515	6 M 380, Subbaya v. Ruthaya... <i>Dis</i> ... 10 C W N 719=4 C L J 306=38 ^a C 1094 ... 208
2 M 338, Venkata Rama Rao v. Venkata Suriya Rao... <i>R</i> ... 21 T L R 67 ... 414	7 M 8, Eranjeli Vishnu Namabudri v. Eranjoli Krishnan Namabudri... <i>R</i> ... 29 M 24=16 M L J 8 ... 309
M 103, Rajagopal Muttupaleni Chetti... <i>R</i> ... 3 C L J 119 ... 284	7 M 80, Sabhanatha v. Lakshmi... <i>Rand F</i> ... 1 M L T 69 ... 418
3 M 107, British India Steam Navigation Company v. Hajee Muhammad... <i>Dis</i> ... 108 P R 1906 (F. B.) ... 602	7 M 255, Kuriyali v. Mayan... <i>D</i> ... 16 M L J 545 ... V
3 M 188, Achamparambath Cheria Kunhammu v. William Sydenham Gantz... <i>F</i> ... 49 P R 1906 (F. B.)=106 P L R 1906 ... 184	7 M 423, Periandi v. Angappa... <i>R</i> ... 100 P R 1905=16 P L R 1906 ... 415
3 M 240, Kalu Ram v. Madras Railway Company... <i>Dis</i> ... 108 P R 1906 (F. B.) ... 602	7 M 499, Appasami v. Nagappa... <i>Dis</i> ... 1 M L T 127=16 M L J 435 ... 17
3 M 290, Muttu Vaduganadha Tevar v. Dora Singha Tevar... <i>R</i> ... 16 M L J 178=29 M 487 ... 472	7 M 584, Vasudeva Chinnasami... <i>R</i> ... 3 C L J 545=10 C W N 986=33 C 1823 ... 588
4 M 1, Ponnappa Pillai v. Pappuvayungar... <i>R</i> ... 2 N L R 90 ... 707	7 M 595, Virasami v. Athi... <i>D</i> ... A W N (1906), 152=3 A L J 845=28 A 651 ... 626
4 M 17, Kylasa Goundan v. Ramaswami Ayyan... <i>F</i> ... 8 Bom L R 218=30 B 415 ... 104	8 M 83, Pathuma v. Salimama... <i>D</i> ... 29 M 65 ... 807
4 M 250, Naraganti v. Venkatachalapati... <i>App</i> ... 2 C L J 231 (P.C.)=10 C W N 95=15 M L J 312=2 A L J 845=7 Bom L R 907=1 M L T 12=32 I A 261 ... 479	8 M 92, Subramanya v. Ponnusami... <i>Refd. to</i> ... 3 C L J 260 ... 35
4 M 272, Hanumantamma v. Rami Reddi... <i>Refd to</i> ... 29 M 24=16 M L J 8 ... 309	8 M 107, Mari v. Chinnammal... <i>R</i> ... 20 P R 1906=69 P L R 1906 ... 482
4 M 339, Krishnamachariar v. Srinivasa Iyengar... <i>F</i> ... 1 M L T 311 (F. B.)=16 M L J 458 ... 376	8 M 185, Mullikarjunudu v. Mullikarjunudu... <i>D</i> ... 50 P R 1906 ... 602
4 M 371, Jaggannadha v. Pedda... <i>Appl</i> ... 4 C L J 399 ... 659	8 M 464, Mirabivi v. Vellayanna... <i>R</i> ... 29 M 24=16 M L J 8 ... 309
4 M 420, Srinivasa Ayyangar v. Peria Tambi Nayakar... <i>D</i> ... 29 M 172 ... 369	8 M 478, Karuthasami v. Joganatha... <i>R</i> ... 100 P R 1905=16 P L R 1906 ... 415
5 M 161, Chidambara v. Ramaswami... <i>Refd to</i> ... A W N (1906) 54=3 A L J 123 ... 223	8 M 511, Ramakrishnappe v. Adinarayana... <i>R</i> ... 8 Bom L R 878 ... 265
5 M 229 (280), Krishnama v. Gangaran... <i>R</i> ... 29 M 29 ... 560 & 674	9 M 1, Lakshmi v. Sridevi... <i>F</i> ... 16 M L J 475=1 M L T 348=29 M 529 ... 625
5 M 241, Lakhmanammal v. Thiruvengada Mudali... <i>R</i> ... 20 P R 1906=69 P L R 1906 ... 482	9 M 80, Sudindra v. Budan... <i>R</i> ... 16 M L J 415=29 M 553 ... 808
5 M 335, Thimmappa v. Lakshamma... <i>R</i> ... 29 M 217 ... 908	9 M 103, Appasami v. Manickam... <i>R</i> ... 9 O C 365 ... 275
5 M 343=9 I A 128, Muttayan Chetti v. Shivagiri Zehindar... <i>F</i> ... 1 M L T 287=39 M 484=16 M L J 499 ... 481	9 M 142, Venkatagiri v. Raghava... <i>R</i> ... 9 O C 296 ... 925
	9 M 375, Rama v. Kunji... <i>R</i> ... 3 A L J 579 (F. B.)=A W N (1906) 235=1 M L T 242 ... 90
	9 M 463, Adamson v. Arumugam... <i>Appr</i> ... 10 C W N 837=33 C 905 ... 219

* This is a mistake for 6 M 341 (350).

9 M 463, Adamson v. Arumugam...R...2 N L R 116 400	18 M 269, Krishna v. Chathappan...R...21 T L R 219 635
10 M 69, Tellis v. Saldanha...Diss...8 Bom L R 770 19	18 M 281, Lakshmanamma v. Kameswara...not F... 21 T L R 199 794
10 M 94, Pothi Reddi v. Velayuda-Sivan...Distd ...15 M L J 484=29 M 111... 198	18 M 385, Pasupati v. Narayana...F...16 M L J 351 565
10 M 115, Alubi v. Kunhi Bibi...Diss...88 P R 1906 604	18 M 508, Ramasami v. Subbasami...R...1 M L T 311 (F.B.)=16 M L J 458... 376
10 M 187, Venkappa v. Narasimha...Appr...1 M L T 811 (F.B.)=16 M L J 458 376	14 M 23 (25), Ambu v. Ketliamma...F...29 M 151 258
10 M 208, Appa Raw v. Suryanarayana...R... 29 M 401 689	14 M 26, Unni v. Kunchi Amma...Refd to... A W N (1905), 176-2 A L J 507=28 A 80 54
10 M 229, Ramachandra v. Narayanasami...Diss ...29 M 75 113	-----, F... 9 C W N 636=1 C L J 408=83 C 527*
11 M 509, Ringasami v. Muthikumarappa ...disapproved...4 C L J 216=88 C 985 924	14 M 81, Govinda v. Bhandari...explained & D... 3 C L J 545=10 C W N 986=33 C 1323 588
11 M 26, Minakshi Naidu v. Subramanya Sastri...R...8 L B R 203 (F.B.)... 231	14 M 96, Ahina v. Kutti...R...2 N L R 32...620
11 M 85, Suppu v. Govindacharyar...F...2 N L R 81 286	14 M 149, Nallanna v. Ponnal...Diss... A W N (1906) 13=8 A L J 87=28 A 307 482
11 M 151, Venkoba v. Subbanna...R...9 O C 224 221	-----, R... 20 P R 1906=63 P L R 1906 ...482
11 M 290, Pattat Ambadi Marar v. Krishnan ...R...9 O C 174 (B) 89	14 M 150, Pydel v. Chathappan...F... 3 C L J 188 236 & 589
11 M 295, Bishop Mellus v. Vicar Apostolic of Malabar...F...135 P R 1906 226	14 M 227, Venkata v. Sama and others...R... 8 L B R 225 260
11 M 327, Kunhi v. Moidin...F...7 Bom L R 684=80 B 122 649	14 M 232, Ramayya v. Guruva...Diss... A W N (1905) 226=28 A 157 604
12 M 188, Venkaria v. Aitamma...R & D...1 M L T 69 413	14 M 274, Nunu Meah v. Krishnasawmi...R... 21 T L R 56 518
12 M 404, The Collector of Salem v. Rangappa ...R...1 M L T 278=29 M 461 ... 411	14 M 454, Janaki v. Dhannu Lal...R... 10 C W N 566 158
12 M 439, Vythinadayyan v. Subramanya ...overruled...1 M L T 145=16 M L J 372=29 M 426 (F.B.) ... 887	-----, R... 2 N L R 123 522
12 M 454, Vallabhan v. Pangunni...R...3 L B R 225 260	14 M 480, Reference under Court Fees Act...R ...29 M 367=16 M L J 287 ... 373
12 M 488, Chengal Reddi v. Venkata Reddi ...F...A W N (1905) 171=2 L J 493= 28 A 85 * 284	14 M 490, Parameswaran v. Shangaran...R...2 29 M 29 560, 674
13 M 41, Ravuthu Kounden v. Muthu Kounden...R...1 M L T 381 (F.B.)=16 L J 514 117	14 M 498, Paramasiva v. Krishna...F...2 N L 45 220
13 M 178, Ramasami v. Kurisu...doubted...2 N L R 23 852	15 M 15, Abdulkadar v. Muhammad...F...135 P R 1906 226
13 M 236, Seshan v. Raja Gopala...R...9 O C 209 (B) 590	-----, R... 3 A L J 316=A W N (1906) 149... 863
13 M 255, Raffles v. Gould...D...71 P R 1906 790	15 M 54, Uhinan v. Ramachandra...Appr & F...1 M L T 482 842
13 M 269, Krishna v. Chathappan...R...3 C L J 545=10 C W N 986=83 C 1323 ...588	15 M 78, Patcha Sahib v. Sub-Collector of North Arcot...D...78 P R 1906=150 P L R 1906 586

* In Col 284, this is wrongly printed as 24 A 24.

* In Col 607, this is wrongly printed as 88 C 587.

15 M 99; Gopi Reddi v. Mahanandi Reddi ... R ...U B R Specific Relief 80... 861	17 M 146, Ponnayya Goundan v. Muttu Goundan... D ...21 T L R 119 ... 859
15 M 111, Vithilinga Padayachi v. Vythilinga Mudaly... Refd. to & F ...16 M L J 41 =1 M L T 25=29 M 159 ... 207	... Appr and F ... 1 M L T 482 ... 842
15 M 159, Anderson v. Periasami... F ...A W N (1906), 55=3 A L J 165=28 A 891... 590	17 M 169, Namasivaya Gurakkal v. Kadir Ammal... Refd. to and F ...16 M L J 41=1 M L T 25=29 M 195 ... 207
15 M 170, Manavikraman v. Unniappan... R ... 48 P R 1906 (F.B.)=104 P L R 1906 ... 759	17 M 182, Ramappa Udayan v. Arumughat Udayan... dissented from ...A W N (1906) 18=3 A L J 87=28 A 307 ... 482
15 M 264, Madhavi v. Kelu... F ...29 M 515 ... 822	17 M 212, Shaik David Saiba v. Hoosain Saiba ... F ...1 M L T 127=16 M L J 435 ... 17
15 M 386, Thandavan v. Valliamma... F ...21 T L R 199 ... 794	17 M 235 (F.B.), Thapita Peter v. Thapita Lakshmi... F ...8 Bom. L R 856 ... 24
15 M 384, Lakshminarasimham v. Somasundram... R ...2 N L R 81 ... 286	17 M 273, Subbammal v. Huddleston... over-ruled ...16 M L J 41=1 M L T 25=29 M 195 ... 207
15 M 401, Ukku v. Kutti... overruled ...1 M L T 153 (F.B.)=29 M 336=16 M L J 395 ... 890	17 M 377, Venkatrayar v. Jamboo Ayyan... Diss ...2 N L R 54 ... 310
15 M 412, Kasturi v. Venkatachalapathi... R ... 2 N L R 106 ... 445	† 17 M 431, Sivakami Ammal v. Gopala Savundram Ayyan... Diss ...A W N (1905), 226 =28 A 157 ... 694
16 M 20, Sah Man Mull v. Kanagasabapathi ... F ...29 M 318 ... 243 & 244	17 M 461, Abboy Chetti v. Ramchandra... R ...9 O C 174 (B.) ... 39
16 M 140, Kunhanna v. Kunhunni... doubted ...29 M 151 ... 258	18 M 28, Periakaruppan v. Palaniyandi... F ... 134 P R 1906 ... 855
16 M 148, Krishnamma v. Suranna... R ...29 M 362 ... 900	18 M 29, Madras Deposit of Benefit Society Ltd. v. Oonamalai Ammal... not approved ...1 M L T 416 ... 892
16 M 201, Kunhacha Umma v. Kutti Mammi Hajee... R ...29 M 822 ... 659	18 M 93, Alagappa v. Vellian Chetti... R ...127 P R 1906... 349
16 M 294, Balakrishna v. The Secretary of State for India... R ...21 T L R 41 ... 584	... R ...2 N L R 79 ... 738
16 M 311 (315), Sundaram v. Sethammal... R ... 9 C W N 636=1 C L J 408=33 C 257* ... 607	18 M 93, Damodara Mudaliar v. Secretary of State for India... F ...21 T L R 142 ... 860
16 M 319, Mallikarjuna v. Pullayya... R ...2 N L R 79 ... 738	18 M 136, Minakshi Sundrum v. Ayyathorai ... D ...10 C W N 932... 701
16 M 326, Vasudeva v. Madhava... Distd ...1 M L T 811 (F.B.)=16 M L J 458 ... 376	18 M 168, Balamma v. Pullayya... R ...20 P R 1906=69 P I, R 1906 ... 482
16 M 464, Papiroddi v. Narasareddi... Appr & F ...1 M L T 153 (F.B.)=29 M 336= 16 M L J 395 ... 890	18 M 173, Venkatanarasimhulu v. Peramma ... F ...8 Bom L R 283 ... 487
16 M 466, Ramasami v. Papayya ... F ...3 C L J 502=10 C W N 695 (S.B.)=33 C 947† ... 21	18 M 189, Srirangachari v. Ramasamy Ayyangar ... Refd. to and F ...16 M L J 41=1 M L T 25=29 M 195 ... 207
16 M 474, Srinivasa v. Rudhna Sabapathi ... doubted ...16 M L J 87=29 M 118 ... 339	18 M 374, Ramanuja Ayyangar v. Narayana Ayyangar... Refd to ...2 N L R 17... 8 ... D ...29 M 515 ... 822
17 M 108, Vaidynatha Ayyar v. Ghinnasami Naik... cited & F ...10 P R 1906... 349	12 M 414, Venkappa Nayanin v. Thimappa Nayanin... commented on ...16 M L J 354 ... 276
17 M 122, Ramayya v. Venkataratnam... D ...69 P R 1906=118 P L R 1906 492	

In Col 607, this is wrongly printed as 33 C 527.

† In Col. 21, this is wrongly printed as 33 C 957.

‡ This is a mistake for 17 M 131.

18 M 421, Subba Sastri v. Balachandra Sastri ...R...9 O C 80 ... 803	20 M 68, Panchena Manchu Nayar v. Gadin- hara Kumaranchath Padmanabhan Nayar...Appr...1 M L T 287=16 M L J 385=29 M 477 ... 44
18 M 423, Husanani v. Linganna...Refd to... 2 C L J 158=10 C W N 601 ... 290	-----,D...1 M L T 106 ... 45
18 M 434, Peria Royalu Reddi v. Royalu Reddi ...R...1 M L T 278=29 M 461 ...411	-----, *Mahadevi v. Neelamani...D...29 M 173 812
18 M 454, Subramaniam v. Perumal Reddi, ...not F...190 P L R 1905=1 P *R 1906 790	20 M 86, Krishnappa Chetty v. * Adimula Mudali...R...16 M L J 418 ... 847
18 M 496, Subbayya v. Saminadayyar...R ...9 O C 854 272	20 M 89, Chintamallayya v. Thadi Gangireddi ...F...16 M L J 474... .. 298
-----,F... 2	20 M 141, Vasudevan v. Sankaran...R...21 T L R 230 666
N L R 7 273	20 M 323, Rangammal v. Venkatachari ...R and D...3 P R 1906=109 P L R 1906 185
-----,R... .. 322	20 M 333, Varadarajulu Naidu v. Srinivasulu Naidu...R and D...3 P R 1906=109 P L R 1906... .. 185
21 T L R 191 322	20 M 349, Minakshi Ammal v. Kalinarayana Rayora...R...U B R (1905) Civil Proce- dure 36 242
19 M 31, Bhagavathar v. Nagendrayyan...R.. 1 M L T 237=16 M L J 385=29 M 477 44	20 M 465, Ramasamia Pillai v. Adinarayana Pillai...R...16 M L J 427=1 M L T 351 888
-----,F... 1	20 M 467, Seshaamma v. Chonnappa...F...10 C W N 662=33 C 657 217
M L T 106 45	-----,R...10 C W N 662=33 C 657 217
19 M 35, Thayammal v. Annamalai Mudali ...R ...16 M L J 550 111	20 M 490, Subaraya Chetti v. Sadasiva Chetty ...R...U B R Specific Relief 80... 861
19 M 40, Vallabha v. Vedapuratti ...R... 2 N L R 137 918	21 M 8, Krishnan Nambiar v. Kannan...F...2 N L R 174 613
-----,Disc... 2 N	21 M 18, Nainappa v. Chidambaram...R...100 P R 1905=16 P L R 1905 ... 415
L R 137 918	21 M 28, Sami Ayyengar v. Ponnammal ...Appr...J M L T 28=16 M L J 69=29 M 200 489
19 M 74, Rangayya v. Thanikachalla ...relied on...4 C L J 323 484	21 M 30, Bojjamma v. Venkataramayya...Appr... 1 M L T 377†(F.B.), ... 37, 38
19 M 140 (142), Narayanan Chetti v. Aruna- chellem Chetti ...R & F...3 C L J 67=3 33 C 927 300	21 M 35, Achuta Menon v. Achutan Nayar...R... 9 O C 164 274
19 M 200, Krishna Panda v. Balaram Panda ...R and F...4 C L J 162=33 C 881 611	21 M 56, Ranga Ayyar v. Srinivasa Ayyangar ...D...21 T L R 119 359
U B R Specific Relief 30 ... 861	-----,Runga Aiyar v. Srinivasa Iyengar, ...Appr and F...1 M L T 432 ... 842
19 M 324, Tirumalaiswami v. Tirumalai Goun- den...R...1 M L T 278=29 M 461...411	21 M 141, Natesan Chetti v. Soundararaja Ayyangar...Dis...9 O C 284 ... 610
19 M 327, Arunachella Chetti v. Sithayi Ammai ...R...9 O C 18 901	-----,overruled ...29 M 305 618
19 M 340, Kollipara v. Maddula ...R...9 O C 221 596	
-----,Kullipara Pullamma v. Muddulu Tatayya...F...16 M L J 99=29 M 284 596	
19 M 367, Subramanya Chettyar v. Pad- manabha Chettyar...F...A W N (1905) 174=28 A 50 499	
20 M 35, Muthu Vijia v. Venkatachalam...F... 9 O C 233 681	
20 M 58, Sreeni Chettiar v. Santhufathhan Chettiar...Distd...29 M 353 ... 614	

A W N (1906) = 3 A L J 138=28 A
277 786

*In Col. 812, this is a mistake for 20 M 260

†In Cols. 37 and 38, this is wrongly printed as 1
M L T 337.

21 M 158, Ittappan v. Manavikrama...D...21 T L R 159 ... 819	22 M 209 (212), Huthasanan v. Parameswaran ...F... 2 N L R 116 ... 707
22 M 179, Sheshadri Iyengar v. Nataraja Iyer ...F...1 M L T 127=16 M L J 485 ... 17	22 M 212, Vasudevan Nambudri v. Mammud ...D... 1 M L T 106 ... 45
21 M 289, Karuppanan Ambalan v. Ramasami Chetti...R...1 M L T 414 ... 851	22 M 214, Muthu Vijaya Raghunatha Udayana Thevar v. Thandavaraya Thambiran ...commented on...16 M L J 854... 276
21 M 268, Venkatasubramanian Chetti v. Thayarammah ...R... 20 P R 1906=60 P L R 1906 ... 482	22 M 221, Gilkinson v. Subramania Aiyar ...Refd to... 16 M L J 80 ... 284
21 M 291, Ittappan v. Parangodan Nayar ...over ruled...1 M L T 158 (F.B.)=29 M 886=16 M L J 895 ... 890	22 M 259, Rangasawmi Pillai v. Krishna Pillai ...over-ruled...16 M L J 48=29 M 158 (F.B.) ... 210
21 M 824, Sankaralinga Mudali v. Ratnasabha- pati Mudali ...D... 2 N L R 68 ... 846	22 M 289, Sinaya v. Munisami ...Refd. to... 8 C L J 200 ... 85
21 M 825, ----- Distd... 29 M 824 ... 227	22 M 310, Siva Ramayya v. Ellamma ...Refd to... 2 N L R 17 ... 8
21 M 856, Ramayyar v. Ramayyar ...F... 16 M L J 38 ... 250	----- R... 26 P R 1906=20 P L R 1906 ... 345
----- R... 21 T L R 296 ... 321	22 M 323, Zamorin of Calicut v. Narayanan Mussad ...F... 29 M 515 ... 822
21 M 864, Subbaraya Ravuthaninda Nainar v. Ponnusami Nadar ...F... 29 M 170=16 M L J 138 ... 706	22 M 347, Mayan Pathuti v. Pakuran...F... 8 C 288 ... 922
21 M 891, Gurumurti v. Sivayya overruled... 1 M L T 377* (F.B.) ... 87 & 38	22 M 364, Paramashraya v. Seshagiriappa...F... 8 C L J 188 ... 286, 589
21 M 895, Ramanadam Chetty v. Nagooda Marcayar...R...1 M L T 407=29 M 526 ... 698 & 699	22 M 372, Muthuraman Chetti v. Ettappasami ...R and D... 15 M L J 445=29 M 421 ... 920, 921
21 M 409, Periatambi Udayan v. Vellaya Goun- den ...doubted...16 M L J 33... 250	----- R...157 P L R 1906 ... 921
----- R...21 T L R 206 ... 321	22 M 383, The Pittapur Case...R...16 M L J 839=1 M L T 272=29 M 458 ... 480
21 M 419, Subramania Pillai v. Subramania Ayyar...F... 29 M 324 ... 227	----- R...1 M L T 287=29 M 464=16 M L J 499 ... 481
----- F... 2 N L R 68 ... 846	22 M 644, Sri Bahusa Ramalakshamma v. The Collector of the Godavari District ...F...1 M L T 101 ... 5
22 M 109, Sriramulu v. Ramasam...F...A W N (1905), 218=28 A 133 ... 580	22 M 508 (513), Pranal Anni v. Lakshmi Anni ...R...11 P R 1906 ... 782
22 M 133, Narayana Reddi v. Papayya...F...8 C L J 588 ... 910	22 M 508 (P.C.), Pranal Anni v. Lakshmi Anni ...F...29 M 365 ... 783
----- R... 2 N L R 137 ... 918	----- R...A W N (1905), 195=2 A L J 564=28 A 78 ... 786
22 M 137, Periannan Chetty v. The South Indian Railway Company...F...A W N (1906) 101=3 A L J 829=28 A 552 ... 56	----- F...27 P R 1906... 787
22 M 161, Vijbhudapriya Thirthaswami v. Vidyanidhi Thirthaswami...not F...16 M L J 483 ... 268	22 M 522, Raniakkal v. Ramasami Naickan ...R...38 C 1079 ... 516
22 M 179, Sambasiva v. Ramasami...F...8 C L J 339=10 C W N 535 ... 524	23 M 1, Annapurni Nachair v. Forbes...R...16 M L J 178=29 M 437 ... 472
+ 22 M 183, Sankaran Namoiar v. Kanara Kurup...Dist...44 P R 1906 ... 250	23 M 33, Rose Ammal v. Bajarathnam Ammal ...R...16 M L J 146 ... 695
* In Coln. 87 & 38, this is wrongly printed as 1 M L T 337.	23 M 70, Muhammad Esuph Navutan v. Pat- tamma Ammal...R...48 P R 1906=107 P L R 1906 ... 755
+ This is a mistake for 22 M 182	

23 M 187, Subrahmaniam Ayyan v. Krishna Ayyan...3 D...3 C L J 868=10 C W N 788=38 C 812 164	24 M 62, Narasinga Bhakshi v. Govinda Bhakshi...F...A W N (1906) 197=2 A L J 602=28 A 81 295
23 M 171, Subbaraya Pillai v. Rama Sami Pillai...R...10 C W N 1085 488	24 M 96, Sesha Ayyar v. Krishna Ayyangar...F...3 A L J 490=3 W N (1906), 150=28 A 598 697
...F... .. 512	R...O C 259...(B) 894
23 M 179, Mustafa Sahib and others v. Santha Pillai...R...U B B (1905) Evidence 7 440	24 M 233, Avuthala v. Dayamma...Dis...9 O ... C 284 610
23 M 190, Angamuthu Pillai v. Kolandavelu Pillai...R...60 P R 1906=118 P L R 1906 492	...over-ruled...29 M 905 618
23 M 227 (P.C.), Mahomed Mira Ravuthar v. Savraji Vijaya Raghunadha Gopalav...R...182 P R 1906 258 & 259	*24 M 244, Ahmed v. Moidin...over-ruled...10 M L J 41=1 M L T 25=29 M 195...207
23 M 260, Causanel v. Soures...not followed ... 1 M L T 268(F. B.)= 16 M L J 479 280	24 M 265, Nagappa v. Venkat Rao...R...8 Bom. L R 813 (F.B.)=1 M L T 370 276
23 M 271 (F. C.), Gnanasambanda Pandara Sannadhi v. Velu Pandaram ...R... 33 C 507 508	24 M 296, Savitri Antartjanam v. Raman Nambudiri...R...29 M 29 560, 674
...F... 3 C L J 806=10 C W N 738=38 C 511 622	24 M 331, Valambal Ammal v. Vythilinga Mudaliar...Dis...A W N (1906) 21=28 A 310=3 A L J 888 376
23 M 306, Dorasawmi v. Annasawmi ...R & F... 3 C L J 67=38 C 927 300	† 24 M 437, Mithiram v. Somanatha...dis-approved...4 C L J 216=38 C 985...924
23 M 391, Ramasawmi Sastrulu v. Kameswaramma...D...16 M L J 439 268	24 M 350, Gururajammah v. Venkata Krishnamma...R...10 C W N 984=4 C L J 149=38 C 1101 818
23 M 445, Perambra Nayar v. Subrahmanian Pattar...F...1 M L T 268 (F. B.)= 16 M L J 479 290	24 M 377, Immudipatam Tirugnana Kondama Naick v. Periya Doraisami...explained...1 M L T 153 (F.B.)=29 M 886=16 M L J 395 890
23 M 447, Seshan Pattar v. Sheshan Pattar ...R...1 M L T 268 (F. B.)=16 M L J 479 280	24 M 405, Ayyadurai Pillai v. Solai Ammal...R...1 M L T 188=16 M L J 307 (F.B.)=29 M 890... .. 506
23 M 490, Ponnammal v. Sundram Pillai...R... 4 C L J 181=8 Bom L R 705=30 B 593=1 M L T 301 (F. C.) 544	24 M 449, Ramasami Pattar v. Chinnan Asari...approved and followed...1 M L T 153 (F.B.)=29 M 886=16 M L J 395 800
23 M 580, Pakran v. Kunhammed ...R... 10 C W N 717=38 C 584 792	24 M 606, The Udayarpalayam Case...R...16 M L J 178=29 M 437 472
23 M 593, Sornavalli Ammal v. Muthayya Sastrigal...R and F...4 C L J 162=38 C 681 611	24 M 629, Ramnad Case...R...16 M L J 178=29 M 437... .. 472
23 M 597, Krishna Ayyar v. Krishnasami Ayyar ...R...11 C W N 139 87	24 M 654, Muhammad Khumarali v. Ranga Rao...R... 144 P R 1906 86
...explained... 1 M L T 377 (F.B.) 37 & 38	24 M 657 (Note), Ramchandra Rao v. Abeeb Bowthan ...R... 9 O C 174 (B) 39
23 M 637, Commercial Bank of India v. Atteendrarajya...F...29 M 170=15 M L J 138 706	24 M 669, Lakshmanan Chetti v. Kuttayan Chetti ...R...47 P R 1906 278
	25 M 44†† Mallikarjunadu v. Lingamurthi ...Dis... 2 N L R 137 918

*This is a mistake for 24 M 444

† This is a mistake for 24 M 397.

†† This is a mistake for 25 M-244.

*In Cols. 37 & 38, this is wrongly printed
1 M L T 387.

25 M 108 (116), Dorasami v. Venkata-Seshayyar .. Refd. to .. 7 Bom L R 811 = 30 B 156 .. 221 & 718	26 M 91, Lakshmanaswami v. Rangamma.. R .. 8 Bom L R 819 (F. B.) = 1 M L T 370 .. 276
25 M 188, Oriental Government Security Life Assurance Company Limited v. Narasimbachari.. R .. 2 N L R 94.. 420	* 26 M 97, Krishnam Chariar v. Mangun- mal, .. R .. 16 M L J 411 .. 465
25 M 220, Narayanayyar v. Venkatarama Aiyar .. F .. 16 M L J 58 .. 628	26 M 104, Kaveri Ammal v. Sastri Ramier.. R .. 9 O C 248 (B) .. 210
25 M 230 (237), Narayana v. Venkatramana .. R and F .. 4 C L J 29* = 33 C 985 .. 924	26 M 157, Parmeshri v. Vittappa Shanbaga .. F .. A W N (1906) 60 = 3 A L J 196 = 28 A 400 .. 571
25 M 244, Mallikarjuna Chetti v. Lingamoorthi Pantulu.. F .. 1 M L T 294 = 16 M L J 508 .. 912	26 M 212, Hari Raminayya v. Hari Venkayya .. R and F .. 15 M L J 491 = 29 M 124 .. 549
25 M 244 at p 281, Mallikarjanadu Setti v. Lin- gamurti Pantulu.. R .. 29 M 87.. 918	26 M 252, Narayana Ayyangar v. Orr.. F .. 29 M 24 = 16 M L J 8 .. 309
25 M 244 (at p 289), Mallikarjunadu v. Linga- murthi.. R .. 2 N L R 137 .. 918	† 26 M 262, Narasinga Row v. Muthaya Pillai .. Appl .. 3 A L J 650 .. 456
25 M 343, Sankaranarayana Vadhyar v. Sun- karanarayana Ayyar.. R .. 29 M 491 .. 680	26 M 268, The Secretary of State for India in Council v. Kasturi Reddi .. R .. 1 M L T 278 = 29 M 461 .. 411
25 M 357, Akkanna v. Venkayya.. R .. 21 T L R 56 .. 518	26 M 291, Ratnam Asari v. Akailandammal.. R .. 2 N L R 98.. 190
† 25 M 412, Malli Karjima Sastri v. Narasimba Rao .. Dis .. 44 P R 1906 .. 250	1 M L T 183 = 16 M L J 507 (F. B.) = 29 M 390 .. 506
25 M 431, Periasami v. Krishna.. F .. 34 P R 1906 = 93 P L R 1906 .. 250	26 M 330, Subramania Ayyar v. Arumuga Chetti .. R .. 2 N L R 25 .. 708
9 O C 269 (B) .. 590	26 M 334, Vadali v. Koti Palli.. R .. 33 C 1079 .. 516
25 M 457, Bell v. The Municipal Commissioners .. R .. 10 C W N 857 = 33 C 1040 .. 279 & 280	26 M 410, Raja of Venkatagiri v. Isakapalli Subbiah.. R .. 21 T L R 41 .. 584 .. F .. 1 M L T 397 = 16 M L J 541 .. 603
25 M 507 (511), Seshamma Shettate v. Chickaya Hegade.. R .. 16 M L J 5.. 426, 715, .. 716	26 M 448, <i>In the matter of a Pleader</i> .. R .. 3 A L J 811 = A W N (1906), 268 .. I
25 M 548 Narayanasami Reddi v. Osuru Reddy .. R .. 16 M L J 27 .. 289	.. R .. 2 A L J 811 = A W N (1906), 268 .. 90
25 M 553, Muthayya v. Venkataratnam.. R .. 11 P L R 1906 .. 782	26 M 506 (at p. 508), Boja Reddi v. Perumal Reddi.. R .. 16 M L J 18 .. 661
.. D .. 27 P R 1906 .. 787	26 M 514, Narayana Row v. Dharmachar.. D .. A W N (1906), 264 = 8 A L J 775.. 741 .. R .. A W N (1906), 264 = 3 A L J 775.. 741
25 M 555, Sabbapathi Chetti v. Narayanasami Chetti.. F .. 29 M 1 .. 515	26 M 526, Jambu Chetty v. Palaniappa.. R .. 2 N L R 179 .. 722
25 M 587, The Zamindar of Vizayanagaram v. Behara Suryanarayana Patru.. F .. 2 N L R 174 .. 618	26 M 540, Lakshminarappa v. Melothraman Nair.. D .. 33 C 786.. 878
25 M 655, Narayana Chettiar v. Chokkappa Mudaliar.. R .. 1 M L T 294 = 29 M 473 .. 108	26 M 544, Annamalai Chetty v. Murugesu Chetty.. F .. 29 M 69 .. 548
25 M 690, Aiyagari Venkataramayya v. Aiyya- gari Rammayya.. R .. 2 N L R 52.. 490	26 M 622, Madhwa Sidhanta v. Venkata Ramanujulu.. R .. 10 C W N 884 = 33 C 1269 .. 270
25 M 736, Dhampnanaboyana Gangi v. Addala Ramaswami.. R .. 9 O C 339 .. 821	

*This is a mistake for 4 C L J 216.

† This is a mistake for 24 M 412.

*This is a mistake for 23 M 91 (97).

† This is a mistake for 26 M 362.

26 M 686, Rajah Vizianagram v. Rajah Setru- cherla...R...9 O C 259(B) .. 894	27 M 826, Chidambara Mudaliar v. Kootha Perumal...overruled...1 M L T 28= 16 M L J 69=29 M 200 ... 489
26 M 784, Pathammabi v. Vittil Ummachabi* ...R...21 T L R 228 .. 641	27 M 829, Pathammal v. Syed Kalai Ravuthar ...F...A W N (1906) 89=3 A L J 814= 28 A 473 .. 498
...R...9 O C 97 ... 649	27 M 401, Ekambara Iyyar v. Meenatchi Ammal...R...2 N L R 170 .. 729
...Appr and Foll ...1 M L T 438 .. 885	27 M 495, Vidyapurna Tirthaswami v. Vidya- nithi Tirthaswami...R...16 M L J 415 =29 M 558 ... 808
26 M 742, Sappani Asari v. The Collector of Coimbatore...R...1 M L T 278=29 M 461 .. 411	27 M 465, Nallayappa Pillian v. Ambalavana Pandara Saumadhi...R...16 M L J 489 =1 M L T 831 ... 110
26 M 760, Ramaswamy Ayyar v. Vithinatha Ayyar...F...16 M L J 49=29 M 158 (F.B.) ... 210	27 M 479, Parameshwaran Numbudri v. Vishnu Embrandai...R...1 M L T 414 ... 851
...F...2 N L R 94 ... 819	27 M 480, Eshoor Doss v. Venkata Subba Row ...R...8 Bom L R 885... 47 & 970
26 M 792, Veerasokkurnju v. Papiiah...F...30 B 270 ... 558	27 M 498, Muthumeenakshi Ammal v. Chendra Sekhara Ayyar...R...21 T L R 56...518
27 M 28, Subrahmania Ayyar v. Poovan ...overruled...29 M 805 ... 618	27 M 512, Subba Pillai v. Ramasawmi Ayyar ...R...3 A L J 579(F.B.)=A W N (1906) 235=1 M L T 242 ... 90
27 M 67, Chidambara v. Ramasawmy...Refd. to and F...3 C L J 298=33 C 487...267	27 M 588, Sukhjehari Ingle Rao Sahib v. Bha- vari Boyi Sahib...R...1 M L T 183= 16 M L J 307 (F.B.) . 29 M 390 .. 506
27 M 80, Muthappa Chetty v. Muthu Palani Chetty...D...16 M L J 99 29 M 50 ... 21	28 M 1, Subramanian Chetti v. Arunachalum Chetti...R...21 T L R 56 ... 518
27 M 94, Dorasamy Pillai v. Muthusamy Moopan...R...9 O C 839 ... 821	28 M 7, Achutaramanaraju v. Subbaraju...R...8 Bom L R 553=30 B 426 .. 428
27 M 102, Veerana Pillai v. Muthukumara Asari...F...16 M L J 48=29 M 158 (F.B.) ... 210	28 M 57, Govinda Pillai, v. Thayammal...R...1 M L T 183=16 M L J 807 (F.B.)=29 M 800 ... 506
...F...2 N L R 94 ... 819	28 M 127, Latchmanan Chetty v. Ramanathan Chetty...F...47 P R 1906 ... 278
27 M 112, Perumalla Satyanarayana v. Peru- malla Venkata Rangayya...F...2 N L R 7 ... 278	28 M 205, Ramanuja Aiyangar v. Sadagopa Ai- yangar...Appr...1 M L T 387* (F.B.) 87 & 38
27 M 131=81 I A 1, Abdul Aziz Khan v. Appasami Naicker...R...1 M L T 287= 29 M 484=16 M L J 499 ... 481	28 M 244, Abdulla v. Doctor Oosman...not F... 3 A L J 585 (F.B.)=A W N (1906) 236 =1 M L T 247=28 A 771...253 & 254
27 M 143 (F.C.), Rangayya Appa Rao v. Bobba Sriramulu...Expl and Distd...1 M L T 815=16 M L J 496 .. 111	28 M 859, Paru v. Variangattil Raman...R... 9 O C 209(B) ... 560
27 M 202, Thayyan Nair v. The Zamorin of Calicut...Expl...16 M L J 358=1 M L T 290=29 M 501 .. 710, 711	28 M 867, Yethirajulu Naidu v. Mukunthu Naidu...R...16 M L J 491 ... 523
27 M 249, Periasami Mudaliar v. Seetharama Chettiar...R...21 T L R 41 ... 584	28 M 406, Parambath Manakkal v. Puthengat- til Moosamu...F...2 N L R 94 ... 819
...R... 9 O C 850 ... 615	28 M 437, The Manager of the Court of Wards, Kalahasti Estate v. Ramasami Reddy ...R...1 M L T 268 (F.B.)=16 M L J 479 ... 230
27 M 255, Pongusami v. Mandi...F...2 C L J 158=10 O W N 601 ... 290	
...R...9 O C 205 (B) ... 290	
27 M 225 (following 29 I A 61),— ...F...29 M 308... JJ	29 *This is a mistake for 1 M L T 873 (F.B.)

28 M 473 (*Overruling* 24 M 413), Vaidhinathasamy Ayyar v. Somasundaram Pillai ..F.. 20 M 318 .. 243 & 244
 28 M 496, Vakkalagadda Narasimham v. Vahizulla Sahib...not F...16 M L J 475=1 M L T 348=29 M 520 .. 625
 28 M 526, Muthuvaiyan v. Sinna Samavaiyan ..R...1 M L T 284=29 M 473 .. 106
 28 M 544, Muthar Sahib Mariakar v. Kadar Sahib Maraiakar..R...144 P R 1906..86
 -----R...
 9 O C 174 (B) 39
 28 M 557, Pachappa Achari v. Poojali Seenan ..F.. 8 Bom L R 892 ... 681
 29 M 24, Kakarla Abbaya v. Raja Venkata Papayya Rao..R...3 A L J 467=A W N (1906), 187=28 A 698 ... 308
 29 M 37, Vanmi Kalinga v. Chidambaram. Appr & F..2 A L J 680=A W N (1906), 230=28 A 778 ... 684
 29 M 104, Govindasami Naidu v. Alagirisami Naidu ..R...9 O C 365 ... 275

Allahabad Law Journal.

1 A L J 61, Budhan Singh v. Salig Ram .. Appr...A W N (1906) 138=3 A L J 428=28 A 618 ... 238
 1 A L J 288, Kadir Bakhsh v. Jwala Prasad ...Distd...3 A L J 675=A W N (1906), 283 ... 887
 1 A L J 479, Nazir Husain v. Shibba...Distd... 3 A L J 627=A W N (1906) 258...157
 1 A L J 486, Durga v. Bhagwan Das...R...F O L J 246 ... 446
 2 A L J 59, Chedami Lal v. Shib Charan. R... 9 O C 164... .. 274
 2 A L J 71=32 I A 23=7 Bom L R 1=9 C W N 201 (P. C.), Khairanjmal v. Daim...Appl ...2 A L J 615=A W N (1906), 229=28 A 187 ... 464
 2 A L J 612, Ali Husain Khan v. Tasadduk Husain Khan...Appl. 2 A L J 788=A W N (1906), 264=28 A 246 ... 751
 2 A L J 628=A W N (1906) 156, Nazir Husain v. Nihal Chand...F..2 A L J 680 (F.B.) =A W N (1906) 244=28 A 174 ... 906
 2 A L J 321, Krishna Chandra v. Saeedan Bibi ..R...3 A L J 453=28 A 647 ... 160
 3 A L J 10=A W N (1906) 33, Shiam Lal v. Ganeshi Lal...R...A W N (1906) 187=3 A L J 438 ... 490
 3 A L J 220, Harjas Rai v. Naurang...D...A W N (1906) 165=3 A L J 551=28 A 655

3 A L J 388, Chakauri Devi v. Sundari Devi ...R...3 A L J 467=A W N (1906) 187 =28 A 698 ... 308
 3 A L J 372, Tula Kuar v. Jageshwar Prasad ...F...3 A L J 635=A W N (1906) 233 ... 351
 3 A L J 476=28 A W N (1906) 182, Madan Lal v. Mahomed Ali Nasir Khan...R...3 A L J 781=A W N (1906) 300 ... 711

Allahabad Weekly Notes.

A W N (1891) 147, Udil Narnin v. Rampartab Singh...Dis...1 M L T 395=16 M L J 548 ... 634
 A W N (1894) 109, Khuda Baksh v. Hamdantan Lal...R...2 N L R 150 ... 766
 A W N (1895) 123, Takiya Begam v. Sirajud-dula...overruled...3 A L J 585 (F.B.) =A W N (1906) 236=1 M L T 247=28 A 771 ... 253
 A W N (1899) 78, Tharain Das v. Nand Lal ...F..3 A L J 729=A W N (1906) 299 ... 18
 A W N (1890) 142, Miller v. Digambari Debya ...R..A W N (1906), 44=3 A L J 171 =28 A 865 ... 810
 A W N (1890) 144, Kuar Sen v. Ganga Ram...F..A W N (1905) 265=28 A 240 ... 817
 12 A W N (1892) 283, Yakub Ali v. Dhenpet ...D...A W N (1906), 70=3 A L J 198 ... 809
 A W N (1893) 67, Mahabir Pande v. Nasir-ullah .F...130 P R 1906 ... 620
 A W N (1893) 115, Rudra Prasad v. Baijnath... Refd to...A W N (1906) 63 ... 226
 A W N (1893) 184, Jogul Kishore v. Cheda Lal ...R...3 A L J 585 (F.B.)=A W N (1906) 236=1 M L T 247=28 A 771 ... 253
 A W N (1894) 127, Bhole Nath v. M Buskin... F..A W N (1906) 222=3 A L J 767 ... 129

 Refd to...A W N (1906), 232=28 A 161 ... 543
 A W N (1894) 166, Ram Jatan Shukul v. Jansar Shukul...Refd to...A W N (1906) 232 =28 A 161 ... 543
 A W N (1897) 6, Majidun Ribi v. Sheikh Hayatan...F...3 A L J 350 ... 766
 A W N (1897) 207, Jagan Nath v. Hardayal ...D...3 A L J 655=A W N (1906), 277 ... 553

 3 A L J 489=A W N (1906), 267...572

A W N (1891) 45, Shah Muhammad Khan v. Hanwant Singh... <i>Refd to</i> ... A W N (1905) 188 = 2 A L J 709 = 28 A 76 ... 277	A W N (1905) 242, Nanhi v. Gauri Shankar... <i>F</i> A W N (1906) 13 = 3 A L J 87 = 28 A 307 ... 482	
A W N (1891) 96, Onkar Singh v. Mohan Kuar ... <i>R</i> ... 3 C L J 240 = 10 C W N 209 ... 311	A W N (1905) 266, Gokul Dichhit v. Maheshri Dichhit... <i>F</i> ... A W N (1906) 80 = 28 A 484 ... 748	
A W N (1898) 120, Jai Gobind v. Jasaram... <i>R</i> ... 2 A L J 686 (F.B.) = A W N (1905) 244 = 28 A 174 ... 906	A W N (1906) 83 = 3 A L J 10, Shiam Lal v. Ganesh Lal... <i>R</i> ... A W N (1906) 187 = 3 A L J 433 ... 490	
A W N (1899) 121, Chhotu v. Inayat-ul-lah ... <i>R</i> ... A W N (1906) 174 ... 424, 425	A W N (1906) 157, Syed Ali Sajjad v. Bhajan Singh ... <i>R</i> A W N (1906) 158 = 3 A L J 565 = 28 A 644 ... 212	
A W N (1899) 208, Muhammad Akbar v. Munshi Ram... <i>R</i> ... 3 A L J 445 = 28 A 660 ... 914	26 A W N (1906) 182 = 3 A L J 479, Madan Lal v. Mahomed Ali Nasir Khan... <i>F</i> ... 3 A L J 781 = A W N (1906) 800 ... 711	
A W N (1901) 48, Rahman Chaudhri v. Salamat Chaudhri... <i>Refd. to</i> ... A W N (1905) 288 = 28 A 161 ... 542	A W N (1906) 184, Babu Ram v. Banke Behari Lal... <i>R</i> ... A W N (1906) 264 = 3 A L J 775 ... 741	
A W N (1901) 52, Janki v. Sheo Dhar... <i>D</i> ... A W N (1906) 204 ... 562	Bombay High Court Reports.	
A W N (1901) 53, Kaushal Singh v. Ganash Singh... <i>D</i> ... A W N (1906) 221 ... 864	1 B H C R 117 at p. 124, Vinayak Anandav v. Lakshmbai ... <i>Refd to</i> ... 7 Bom L R 986 = 30 B 229 ... 510	
A W N (1901) 57, Manbahal Rai v. Gopal Misra... <i>F</i> ... A W N (1906) 40 = 3 A L J 81 = 28 A 828 ... 486	1 B H C R 130, Pranivan das Tulsi das <i>et al</i> v. Devkuvarbai <i>et al</i> ... <i>Refd to</i> ... 7 Bom L R 936 = 30 B 229 ... 510	
A W N (1908) 82, Wazir Ali Khan v. Zainab ... <i>F</i> ... A W N (1906) 67 = 3 A L J 216 = 28 A 414 ... 587	5 B H C R 23 (O C J), Secretary of State v. The Bombay Lahding and Shipping Co Ltd... <i>R</i> ... 10 C W N 867 = 38 C 1040 ... 279 & 280	
A W N (1903) 234 = 26 A 205, Katik Ram v. Babu Lal... <i>F</i> ... 2 A L J 450 = A W N (1905) 165 = 28 A 21 ... 292	5 B H C R 70, Navroji Pestonji v. Mansukh Fayachand ... <i>R</i> ... 2 N L R 28 ... 852	
A W N (1904) 128, Ram Sarup v. Sital Prasad ... <i>R</i> ... A W N (1906) 174 = 3 A L J 561 ... 754	5 B H C R 109, Mancharha v. Khmrunisaa Begam... <i>Refd to</i> ... 7 Bom L R 988 = 30 B 359 ... 28	
A W N (1904) 133, Jagram v. Chatarpal... <i>F</i> ... A W N (1906) 21 = 28 A 310 = 3 A L J 838 ... 376	5 B H C R A C J 145, Junardhan v. Gopal ... <i>relied on</i> 4 C L J 323 ... 484	
A W N (1904) 168, Jiwan Ram v. Ram Sarup Ram... <i>F</i> ... 9 O C 260 (B) ... 590	7 B H C A C J 192, Mansukhram Purahotam v. Javarevohu... <i>Dis</i> ... 3 C L J 67 = 38 C 927 ... 800	
A W N (1905) 40, Nepal Rai v. Dobi Prasad ... <i>R</i> ... 9 O C 158 ... 372	9 Bom H C (A C J) 89, Nanabhai Vallabhdas v. Nathabhai Haribhai... <i>R</i> ... 3 Bom L R 842 = 30 B 625 ... 815	
A W N (1905) 112, Nanhi Devi v. Daulat Singh... <i>in part overruled</i> ... A W N (1905) 288 = 28 A 161 ... 542	10 B H C R 851, Brikaji Appaji v. Jagannath Vithal... <i>R</i> ... 1 M L T 188 = 16 M L J 307 (F.B.) = 29 M 990 ... 503	
A W N (1905) 132, Munawar Husain v. Jani Bijai Shankar... <i>R</i> ... A W N (1906) 54 = 3 A L J 18 = 28 A 387 ... 629	11 B H C R 149, Vasudev v. Rama... <i>R</i> ... 190 P L R 1905 = 1 P R 1906 ... 790	
A W N (1905) 156 = 2 A L J 623, Nazir Husain v. Nihal Chand... <i>F</i> ... 2 A L J 680 (F.B.) = A W N (1905) 244 = 28 A 174 ... 906	11 B H C Rep. 224, Shridhar Vanayak v. Narayan Bahaji... <i>R</i> ... 9 O C 285 ... 313	
A W N (1905) 169, Ram Sarup v. Gulsar Bann ... <i>Refd to</i> ... A W N (1906) 223 = 28 A 161 ... 542	12 B H C R 69, Lakshman Ramchandra v. Saravati bai... <i>Relied on</i> ... 10 C W N 1074 = 4 C L J 476 ... 494	
A W N (1905) 223, Phani Singh v. Nawab Singh... <i>F</i> ... A W N (1906) 194 ... 864		

This is a mistake: 11 B H C R 117 at p. 124, Vinayak Anandav v. Lakshmbai ... Refd to ... 7 Bom L R 986 = 30 B 229 ... 510

Bombay Law Reporter.

1 Bom L R 414=23 B 760*, Balvantrao v. Sprott...qualified...8 Bom L R 904 (F. B.) ... 108	
1 Bom L R 832, Basalingappa v. Nazir...commented upon...7 Bom L R 809=30 B 152 ... 464	
2 Bom L R 522=28 A 149†, Balkishen Das v. W. F. Legge...R...8 Bom L R 558=30 B 426 ... 432	
2 Bom L R 523=22 A 149†=27 I A 58, Balkishen Das v. W. F. Legge...Refd to... 7 Bom L R 660=30 B 119 ... 434	
...R...8 Bom L R 704 ... 686	
2 Bom L R 864=25 B 161, Govind v. Parashram...Refd to...7 Bom L R 811=30 B 156 ... 221	
3 Bom L R 94, Soni v. Munshi...D...10 C W N 839 ... 211	
5 Bom L R 213, Rafichdoodas v. Chunilal...R ...16 M L J 427=1 M L T 351 ... 888	
3 Bom L R 829, Ragho Parashram v. Vishnu Govind...F...2 N L R 79 ... 788	
5 Bom L R 304, Sadashiv Raghunath v. Rani-Chandra Chintamen...not F...8 Bom L R 892 ... 692	
5 Bom L R 708, Ningawa v. Ramappa...R...8 Bom L R 897 ... 29	
6 Bom L R 842=28 B 378, Bhagwantappa v. Vishwanath...Dist...7 Bom L R 650=30 B 101 ... 25	
5 Bom L R 592, Ranganath v. Govind...F...8 Bom L R 296=30 B 895 ... 814	
5 Bom L R 504, Tarachand Jagjiwandas v. Bai Hanshi...D...2 N L R 94 ... 813	
4 Bom L R 1=9 C W N 201=2 A L J 71=32 I A 23 (P.C.), Khia Rajmal v. Daim...Appl...2 A L J 615=A W N (1905), 229=28 A 137 ... 464	
7 Bom L R 165=29 B 291, Chandulal Suklal v. Sidhruthrai...Refd to...7 Bom L R 611=30 B 205 ... 381	
7 Bom L R 422=32 C 605 (P.C.), Ezra v. The Secretary of State for India...Refd to ...7 Bom L R 697=30 B 275 ... 62	
7 Bom L R 477=29 B 333, Bachelor v. Mahomedunnisa Begam...F...8 Bom L R 652 ... 645	
7 Bom L R 660, Datto y. Ramchandra...R...8 Bom L R 558=30 B 426 ... 438	
...R...8 Bom L R 764 ... 686	

7 Bom L R 773, Mahomed v. Ezekiel...not F...8 Bom L R 296=30 B 895 ... 814	
7 Bom L R 934, Narayan v. Lakshmandas ...R and F...4 C L J 216=38 C 985 ... 924	
7 Bom L R 965, Karsondas v. Gungabai...R...8 Bom L R 858 ... 589	
8 Bom L R 252, Shamsuddin v. Abdul Hoosein ...R...8 Bom L R 781 ... 651	
8 Bom L R 367, Lakshman Sadashiv v. Gopal Annaji...Expl and discussed...8 Bom L R 932 ... 210	
8 Bom L R 553, Abaji v. Luxman...R...8 Bom L R 764 ... 686	
8 Bom L R 761, Navalbai v. Sivubai...R...8 Bom L R 764 ... 686	

Bengal Law Reports.

1 B L R (F.B.) 93, Nilmoni Singh v. Annoda Prasad...R...3 C L J 143 ... 71	
2 B L R 115 (F.B.), Kalidas v. Krishan...R...4 C L J 323... 484	
3 B L R Appendix* 125, *Girish Chandra v. Amina...Diss...2 N L R 121 ... 788	
3 B L R A C 296, Chand Khan v. Naimat Khan...R...A W N (1905), 217=2 A L J 619=28 A 127... 648	
3 B L R A C J 362, Radha Mohan v. Ram Das Dey...F...3 C L J 224 ... 868	
4 B L R 97 (F. B.), Maniram Deb v. Debi Charan Deb...F...8 Bom L R 19=1 M L T 68 ... 28	
5 B L R 298, Bhya Ram v. Agar Singh...R...9 O C 239... 484	
5 B L R 521, Lopez v. Muddan Thakoor...R...3 C L J 560 (P.C.)=1 M L T 175 ... 4	
...R...3 C L J 316 ... 799	
6 B L R 134, Srimati Padmani Dasi v. Srimati Jagadamba Dasi...F...A W N (1905) 169=2 A L J 700=28 A 89 ... 498	
6 B L R 141, Lady v. Johanson...R...8 L B R 164 ... 216	
6 B L R 255, Budurunnissa Chowdhirain v. Prossuro Kumar Bose...R...3 C L J 560 (P.C.)=1 M L T 175 ... 4	
6 B L R 299, Madhusudan v. Brojo Nath...R...10 C W N 651=3 C L J 576=38 C 613 ... 592	
7 B L R 55, Dwarka Nath Mitter v. Srimati Sarat Kumari Dasi...R...10 C W N 2769=38 C 410=4 C L J 102 ... 699 & 700	
7 B L R 432, Badarunnissa v. Madan...F...3 C L J 49... 648	

* This is a mistake for 23 B 761.

† In this Col. 22 A 149 is a mistake for 22 A 194.

- 7 B L R 720, Donzelle v. Kidar Nath...*Dis...*
141 P R 1906 ... 441
- 7 B L R 728, Jai Narayan Bose v. Kadimbini Dasi...*F...* 141 P R 1906 ... 441
- 8 B L R 12, Krishnabai Martand v. Shripati Pandu...*R...* 10 C W N 802 (P. C.) = 4 C L J 9 = 8 Bom L R 446 = 8 A L J 494 = 1 M L T 21f = 30 B 481 = 16 M L J 446 ... 488
- 8 B L R 110, Luchmeswar Singh Bahadur v. Syad Lutf Ali Khan...*R...* A W N (1905) 167 = 2 A L J 595 = 28 A 25 ... 746
- 8 B L R 122, *The principle of* Srimati Anandmoyee Debi v. Dharendra Chandra Mookerjee...*F...* 10 C W N 560 ... 654
- 8 B L R 438, Justices of the Peace for Calcutta v. The Oriental Gas Company...*R...* 83 C 1828 ... 577
- 8 B L R 566, Hari Har Mukhopadhyaya v. Madhab Chandra Babu...*F...* 10 C W N 484 ... 559
- * 9 B L R 337, Jatindra Mohun Tagore v. Ganandra Mohan Tagore...*R...* 1 M L T 227 ... 41
- 9 B L R 377, Tagore v. Tagore...*R...* 3 C L J 606 ... 520
- 10 B L R 132, Maung Po Aung v. Ma Nyein .. *R...* 3 L B R 175 (F.B) ... 190
- 10 B L R 312, Mollwo Murch and Others v. The Court of Wards...*F...* 10 C W N 313 ... 358
- 10 B L R 355, Purson Chund Golacha v. Kajooram...*Distd...* 3 C L J 199 ... 46
- 10 B L R 406, Nagendra Chundra Ghose v. Mahomed Esaf...*R...* 3 C L J 316 ... 799
- 11 B L R 205, Bissessar Nath v. Maheshar Bakhsh Singh...*R...* 9 O C 129 (B) ... 183
- 11 B L R 286, Jadoonath v. Bassunt Coomar ... *reviewed...* 3 C L J 15 = 10 C W N 510 = 83 C 815 ... 500
- 11 B L R 418, Muktaram v. Gopal...*Refd to...* 3 C L J 260 ... 35
- * 13 B L R App. 11, Mewa Lal Thakur v. Bhujan Jha...*dissented from...* 3 C L J 119 ... 284
- 13 B L R 124 = (1878) L R I A Sup Vol. 181, Raja Leelanund Singh v. Thakoor Munoorunjun Singh...*F...* 3 C L J 1 = 10 C W N 161 = 3 A L J 55 = 8 Bom L R 1 = 16 M L J 1 = 1 M L T 3 (P.C.) = 29 M 52 ... 847
- 13 B L R 177, Lachmee Bukah Roy v. Ranjeet Ramp Pandey...*R...* A W N (1906), 28 = 8 A L J 113 = 28 A 393 ... 585
- 14 B L R 268, Hursahai Singh v. Syud Looft Ali...*Appr...* 3 C L J 816 ... 156
- 14 B L R 450, Prosunno Kumari Debya v. Golab Chand Baboo...*R...* 16 M L J 415 = 29 M 558 ... 808
- 15 B L R App 1, Jalaluddeen v. Shohorullah ... *R...* 8 Bom L R 885 ... 47, 370
- 15 B L R 28, Bhanoomutty Chowdrain v. Premchand Neogy...*R...* 2 N L R 118 ... 718
- 15 B L R 34, Sheo Golam Singh v. Ram Roop Singh...*R...* 2 N L R 113 ... 718
- 15 B L R 33, Kathama Natchiar v. Dorasingha ... *D...* 3 C L J 224 ... 863
- 15 B L R 208 = 2 I A 143, Ram Tuhai Singh v. Bissessar Lal Sahoo...*F...* 8 C L J 283 ... 882
- 15 B L R 350, Shurrat Chandra v. Raj Kissen ... *Refd to...* 3 C L J 260 ... 35
- B L R Sup Vol 349 = 2 W R Mis C 85, Noble Kissen v. Kamines...*R...* 3 C L J 545 = 10 C W N 946 = 33 C 1323 ... 568
- B L R Sup. Vol. 728 = 7 W R 529, *In the matter of* Brojender Coomar Roy...*R...* 3 C L J 545 = 10 C W N 986 = 33 C 1323 ... 588

Calcutta Law Reports.

- 4 C L R 154, Nafur Chander v. Baikanta Nath ... *App...* 4 C L J 573 ... 687, 688
- 5 C L R 278, Kawa Manji and others, v. Khawaz Nussio...*R...* U B R (1905), Evidence 7 ... 440
- 5 C L R 284, Koomud Chunder Dass v. Chunder Kant Mookerjee...*F...* 80 P R 1906 ... 860
- 6 C L R 12, Raj Bahadore Singh v. Achumbit Lall...*R...* 9 C W N 636 = 1 C L J 408 = 33 C 527* ... 607
- 7 C L R 191, Mahomed Foyez Chowdhry v. Goluck Dass...*Distd...* A W N (1905) 191 = 2 A L J 749 = 28 A 72 ... 247
- 8 C L R 381, Rani Anund Koer v. The Court of Wards...*F...* 1 M L T 183 = 16 M L J 307 (F.B.) = 29 M 390 ... 506
- 9 C L R 65, Fatima Bibi v. Arif...*F...* 10 C W N 449 ... 651
- 9 C L R 357 = 7 C 74, Attermoney Dossee v. Hurry Doss Dutt...*Refd. to...* 9 C W N 952 = 38 C 560 ... 582.

Calcutta Law Journal.

1 C L J 78, Mohabharat Shaha v. Abdul Hamid Khan...F. 4 C L J 568 ... 599	
1 C L J 188, Mohesh Majhi v. Pran Krishna Mandal...R. 38 C 680 ... 881	
1 C L J 283 (285), Sib Chandra v. Chandra Narain...R. & F. 4 C L J 198 ... 174	
1 C L J 387, ————F...10 C W N 551=3 C L J 576=38 C 618 ... 697	
—————, ————F...3 C L J 205=38 C 425 ... 905	
1 C L J 381=9 C W N 601=32 I A 102, Shaikh Kumaruddin v. Jawahir Lal...referred on...11 C W N 163. ... 448	
1 C L J 388, Birbadra Rath v. Kalpatara Panda...considered...A W N (1905), 195=2 A L J 564=28 A 78 ... 786	
—————, ————R... 4 C L J 283 ... 457	
1 C L J 437, Mohesh Naram v. Nawbat Pattak...cited & F...4 C L J 198 .. 363 & 364	
1 C L J 1, Mantazuddin v. Barkattulla...F...10 C W N 1081=38 C 821 ... 859	
2 C L J 90, Prince Mahomed Buktyar Shah v. Rani Dhojmani D... 8 C L J 59=38 C 54=10 C W N 425... .. 671	
2 C L J 50 * =9 C W N 784, Atul Krishna Sircar v. Sanyasi Charan Sircar...F...3 C L J 502=10 C W N 695 (S.B.)=39 C 957 ... 21	
2 C L J 80, Abdul Taher v. Asmut Bibi...F...2 C L J 153=10 C W N 601 ... 290	
2 C L J 142, Haranund Naskur v. Doyal Chand Naskur...Appr...38 C 699 ... 288	
2 C L J 158, Chintamani Aditya v. Haladhar Maiti...Appr...38 C 899 ... 288	
2 C L J 158, Chintamani Aditya v. Haladhar Maiti...R...U B R (1905) Civ. Pro. 40 ... 293	
2 C L J 202, Surjiram v. Barham Deo...F...10 C W N 551=3 C L J 576=38 C 618 ... 697	
2 C L J 338, Jagat Mohini Dasi v. Rakhal Das Bisai...F...A W N (1906) 89=3 A L J 314=28 A 478 ... 488	
2 C L J 360, Rai Kamaleswari v. Maharaja Harbullah Narain Singh...D...10 C W N 818 .. 77	
2 C L J 389, Mallika Dasi v. Makham Lal Chowdhury...Distd...3 C L J 201 ... 559	
2 C L J 396, Girwar v. Siraman...Appl...4 C L J 300 ... 418	

* This case is wrongly printed as 2 C L J 5.

2 C L J 408, Ansar Ali Jamadar v. O E Grey...R...3 C L J 274=38 C 329	
—————, ————R...11 C W N 46 ... 847	
2 C L J 448, Ram Churn Tewary v. Protap Chandra Dutt Jha...D...3 C L J 306=10 C W N 738=38 C 511 ... 629	
2 C L J 537, Dinesh Prasad v. Sankar Chaudhury...R. and F...3 C L J 37=38 C 927 ... 309	
2 C L J 546, Ram Kanai Ghosh v. Raja Sri Sri Hari Narayan Singh Deo Bahadur...F...3 C L J 306=10 C W N 738=38 C 511 ... 303	
2 C L J 546, Ram Kanai Ghosh v. Raja Sri Sri Hari Narayan Singh Deo Bahadur...R...3 C L J 306=10 C W N 738=38 C 511 ... 501	
2 C L J 602, Sarala Sundari v. Sarada Prasad...Refd to...3 C L J 205=38 C 425 ... 228	
3 C L J 197, Biraj Mohini v. Chintamani...F...4 C L J 509 ... 48	
—————, ————Appl...3 C L J 257=10 C W N 564...311 & 312	
3 C L J 224=10 C W N 499, Krishna Chandra Dutt v. Miran Bajama...F...10 C W N 719=4 C L J 306=38 C 1094 ... 561	
3 C L J 387, Ashutosh Dhar v. Amir Mollah...R...3 C L J 431=38 C 688 ... 90	
3 C L J 379, Girish Chandra Mukhopadhyaya v. Chhatradhar Ghosh...R...10 C W N 952=38 C 1010 ... 394	
3 C L J 481, Malik Ahmad v. Shamsi Jhan...F...4 C L J 370 ... 738	
4 C L J 171=10 C W N 921, Kanneppalli v. Pucha...Expt & Distd...4 C L J 357=11 C W N 12=38 C 1306... 472 & 473	
4 C L J 195, Harandra Kumar v. Dindayal...doubted...4 C L J 578 ... 687 & 688	
4 C L J 317, Mahomed Taki v. Thomas...doubted...4 C L J 578 ... 687 & 688	
4 C L J 387, Durgamani, Baby v. Ambica Charan Sarma...Appr...4 C L J 427=11 C W N 20=1 M L T 264 (F.B.)...168	
4 C L J 485, Mafuzul Hossain v. Basid...F...4 C L J 578 ... 649	

Calcutta Weekly Notes.

1 C W N 136, Dinesh Chunder v. Samamoyi...Appl...4 C L J 509 ... 48	
1 C W N 180 and 181, Durga Prasad Sen v. Doula Gossai...D...13 C W N 618 ... 77	
1 C W N 226, Bantowari Chowdhurany v. Horro Sunder Mahomed...Expt and Distd...3 C L J 37=38 C 927 ... 309	

1 C W N 348, Kisori Lal Goswami v. Lala • Shib Lal...Expl and D...3 C L J 293= 38 C 487 267	3 C W N 375, Sadho Misser v. Golab Singh...R ...10 C W N 1024 883
1 C W N 345=24 C 589, Amrito Lal v. Surno Moyee...R...11 C W N 65 ... 519	3 C W N 468, Rajani Nath v. Ramanath...F... 3 C L J 260... .. 85
1 C W N 516, Saroda Charan Bandopadhyaya v. Kista Mohun Bhattacharjee...Refd. to and F...3 C L J 280 ... 100	3 C W N 515, Kanti Chandra v. Kristo Churn ...Expl 3 C L J 260a... .. 85
1 C W N 537, Rai Fang Bahadur v. Rai Gudar ...R...U B B (1906), Tort 5 ... 663	3 C W N 604, Hem Chunder Bhunja v. Mon Mohini Dass overruled...10 C W N 547 (F.B.)=3 C L J 470=38 C 566 89
1 C W N 548, Umesh Chandra Bhattacharjee v. Jagadis Chandra Bhattacharjee...R ...2 N L R 98 190	4 C W N XXXV, E R Macnaghten v. Surja Prasad Misra. R 3 A L J 585 (F.B.) =A W N (1906) 290=1 M L T 247= 28 A 771... .. 253 & 254
...F...4 C L J 56 492	4 C W N 283, Mohunt Das v. Nil Komul Dewan...F..2 N L R 84 ... 429
1 C W N 569, Jagabandhu v. Harimohan...R.. 3 A L J 680=A W N (1906) 286... 593	4 C W N 586, Chunder Kumar Mookerjee v. The Secretary of State for India in Council...Refd. to and F...3 C L J 280 100
1 C W N 597, Broja Durlab Singh v. Roma • Nath...R...9 O C 805 ... 275	4 C W N 590, Jogemaya Dass v. Girindra Nath Mukerjee...Refd. to...10 C W N 270 82
1 C W N 617, Mohunt Bagawan v. Khetter Moni...R...3 C L J 293=38 C 487...898	4 C W N 597, Radhamoni Debi v. The Collect- or of Khulna...Refd. to...10 C W N 343... .. 155
1 C W N 682, Dwarkanath Sardar v. Prosunno- Kumar Hajra. R. 38 C 133 ... 637	4 C W N 608, Annada Kumar Naskar v. Hari das Halder...D..2 N L R 101 ... 874
1 C W N 698=24 I A 177=25 C 194 (P.C.), Man- matha Nath Mitter v. Secretary of State for India in Council...D...10 C W N 1044=4 C L J 343=38 C 1290 195	4 C W N 788, Atarjan v. Ashak...R...4 C L J 198 363, 364
2 C W N 1=24 I A 187, Syad Muhammad Yusuf ud-din v. The Queen Empress...R... 10 C W N 361=8 Bom L R 129 (P.C.) =3 A L J 250=38 C 219=3 C L J 395 =16 M L J 115=1 M L T 115 ... 857	5 C W N 56, Motilal Saha v. Monmohan Gos- wami...D..8 C L J 363=10 C W N 788=33 C 812 162
2 C W N 260, Mahandra Nath Mukerjee v. Jogendra Nath Chaudhury...F..3 L B R 227 439	—, —, —...R. 9 O C 315... .. 777
2 C W N 286, Sarat Chunder Dutt v. Kedar Nath Dasg...R...1 M L T 337* (F.B.) 87 & 38	—, —, —...Refd. to & F..3 C L J 280 100
2 C W N 375=25 C 531 (F.B.), Peary Mohun Mukerjee v. Gopal Paik...Distd...10 C W N 216 91	5 C W N 207, Nabu Behari v. Sheikh Maho- med...Distd...16 M L J 266 ... 55
2 C W N 389=25 C 662, Amrito Lal v. Surno Moyee...R...11 C W N 65 ... 519	5 C W N 356, Jogeshur Bhagat v. Ghanshom Dass...R. 9 C W N 989=38 C 92 718
2 C W N 603, Prabh Krishna Tewary v. Jadu Nath • Trivedy...R and Expl...4 C L J 41= 38 C 361 397	5 C W N 781, Musamut Brij Coomaree v. Bamrick Dass...R. 3 C L J 29 ... 52
2 C W N 755, Nilmadhab Bose v. Ananta Ram Bogal...F...3 C L J 201 ... 559	5 C W N 781, In the goods of Luchmi Narain Bogla...R & F...3 C L J 97=38 C 937 300
3 C W N 236=26 C 423 (F.B.), Dwarka Nath Roy v. Brij Chandra Aich...R...10 C W N 526 309	5 C W N 781, Luchminarain Bogla v. Brij Coomaree...D..38 C 1923... .. 577
3 C W N 563, Kista Churn Bhattacharjee v. Ananda Chandra Das...F...38 C 1212	5 C W N 877, Brij Mohini Das v. Srimati Chintamani Das...R...2 O C 365 375
3 C W N 8, Hatt Nath Lohar v. Bhoyendra Nath Das...R...3 A L J 585 (F.B.)= A W N (1906) 290=1 M L T 247=38 A 771 253, 254	

* This is a mistake for 1 M L T 377 (F.B.)

6 C W N 196, Bejoy Gopal Bose v. Umesah Chandra Bose...F...10 C W N 981 ... 172	8 C W N 41=31 C 57 (73), Webb v. Macpherson...R...10 C W N 276=33 C 410=4 C L J 102 ... 699, 700
6 C W N 223, Jaga Lal Chaudhri v. Avadh Behari Prasad Singh...R...3 A L J 668 =A W N (1906) 281 ... 498	8 C W N 54, Shubhadra v. Chandra Kumar ...F...3 C L J 260 ... 35
6 C W N 226=29 C 167=L R 29 I A 51, Ghulam Jilani v. Muhammad Ahmed ...considered...10 C W N 609 (F.B.)=3 C L J 450= 33 C 753 291	8 C W N 101, Harek Chand Dabu v. Bishan Chandra Banerji...R...U B R (1906), Evidence 18 ... 436
6 C W N 310, Brojo Chunder Goswami v. Raj Kumar Roy...Refd. to...10 C W N 232 ... 31	8 C W N 172, Jagun Proshad v. Posun Sahoo ...F...11 C W N 83 ... 723
6 C W N 575, Fayj Dhali v. Aftabuddin...F...3 C L J 201 ... 559	8 C W N 174, Dictum of Banerji, J. in Fakir Chandra Datta v. Messrs Gisborne & Co...not F...10 C W N 199 ... 233
6 C W N 585, Ram Prasad v. Sachi Dass...R...9 O C 389 ... 821	8 C W N 362, Purna Chandra v. Nobin Chandra ...F...3 C L J 260 ... 35
6 C W N 630, Ramrup Sahay v. Khushal Misser ...Refd. to & F...3 C L J 230 ... 100	8 C W N 365, Hare Krishna v. Robert Watson & Co...D...3 C L J 205=33 C 425...677
-----Expl...1 C L J 538=10 C W N 180=33 C 84 ... 101	8 C W N 382, Baij Nath Pershad v. Ghansham ...D...3 C L J 95 ... 629
6 C W N 656, Kadaressur Sen v. Mohim Chandra...F...10 C W N 303=4 C L J 530 ... 633	8 C W N 390, Shyama Charan Pramanick v. Prohad Durwan...F...A W N (1906) 64 =3 A L J 163=28 A 408 ... 287
-----F...1 M L T 375=16 M L J 548 ... 634	8 C W N 473, Jogeswar Atha v. Ganga Bishnu Ghattack...R...10 C W N 1024 ... 833
6 C W N 638, Shoo Ratan Singh v. Net Lal Sahu...Distd...3 C L J 280 ... 100	8 C W N 640, Monmohini v. Pero Nath...Expl & F...11 C W N 57 ... 78
6 C W N 710, Radhe Singh v. Mangi Ram...R...A W N (1906), 315 ... 307	8 C W N 658, Dal Koer v. Panbas Koer...R...33 C 1079 ... 516
6 C W N 787, Pundit Prayag Raj v. Goukaran ...R...3 C L J 422 (S.B.)=10 C W N 673=33 C 713 ... 23	8 C W N 672, Coventry v. Tulshi Prasad ...re- hed on...10 C W N 830=4 C L J 319 ... 261
-----Distd...10 C W N 422...433	8 C W N 802, Narmada Debi v. Shosibhusan Bit ...R & F...9 C W N 636=1 C L J 408=33 C 527+ ... 607
6 C W N 823, Moharani Beni Pershad Koeri v. Goburdhan Koeri...Refd. to...10 C W N 216... 91	8 C W N 889++=31 I A 144, Upendra Krishna v. Ismail Khan...F...10 C W N 508... 73
6 C W N 863, Chunder Nath Bose v. Ram Nidhi Pal...R...9 C W N 636=1 C L J 408=33 C 527* ... 607	8 C W N 923=31 C 1026, Jnanendra Mohan Chowdhury v. Gopal Das Chowdhury ...Appl...10 C W N 216 ... 91
7 C W N 160, Dinamoyee Debi v. Bon Behari Kapur...R...4 C L J 41=33 C 861...897	9 C W N 34, Pramada Nath Roy...R...10 C W N 952=33 C 1010 ... 364
7 C W N 419, Rakhalmuni Dass v. Adoita Prasad Roy...R...9 O C 365 ... 275	9 C W N 81=32 C 253 (F.B.), Bibee Tulsiman v. Harihar Mahto...F...8 Bom L R 808 ... 232
7 C W N 538, Sri Punnabati Dai v. Padmanund Singh...R...10 C W N 991 ... 63	-----R... 10 C W N 306 ... 443
7 C W N 725, Nagendra Chandra Dey v. Ambr Chandra Kundu...R...11 C W N 139 ... 37	9 C W N 84, Raja Promoda Nath Roy v. Raja Ramoni Kant Roy...R...10 C W N 787 ... 303
7 C W N 864=30 C 990, Bejoy Gopal Mukerjee v. Nilratan Mukerjee...Distd...9 C W N 636=1 C L J 408=33 C 527* ... 607	9 C W N 134, Asgar Ali v. Asghoddin Kazi...F...10 C W N 240 ... 240

† This is a mistake for '88 C' 257.

†† This is a mistake for S O W N 880.

—, Azgar Ali v. Asahoddin Kazi ..E..	11 C W N 168 ... 242, 448
9 C W N 171, Bhugwan Das Khettry v. Nilkan- ta Ganguli...R..2 N L R 178 .. VI	
9 C W N 201 (P.C.)=2 A L J 7* = 32 I A 23=	
Bonn. LR 1, Khirajmal v. Daim...Appl	
2 A L J 615=, A W N (1905) 229=28,	
A 137 404	
9 C W N 309, Probodh Lal Kundu v. Harish Chandra Dey...R..9 O C 119 (B)	
... .. 520, 521	
9 C W N 379, Dina Nath Roy v. Krishna Bejoy Saha...F..8 C L J 343=33 C 531	
... .. 91	
9 C W N 502, Mulji Virji v. Bangabashi Saha ...R...33 C 1828 577	
9 C W N 567=32 C 683, Ramaswar Singh v. Jibonder Singh...F...10 C W N 978=	
33 C 1158... .. 183	
9 C W N 601=32 I A 102, Shaikh Kumaruddin v. Jawahir Lal...relied on... 11 C W	
N 163 448	
9 C W N 605, Menat Ali v. Amdar Ali...F...3	
C L J 138... .. 236	
9 C W N 705=32 C 875, Bidiyamoey Debya Chowdhurani v. Surya Kant Acharya	
...commented on...10 C W N 841	
... .. 166	
9 C W N 784 = 2 C L J 5† Ahul Krishna Sir- car v. Sanyasi Charan Sircar...F...3	
C L J 502=10 C W N 695 (S. B.)=33	
C 957† 21	
9 C W N 863, Nawab Johan Ara Begum v. Mirza Shujuddin Bukht Bahadur	
...Expl and D...4 C L J 79 ... 904	
9 C W N 868=32 C 1077, Krishna Chandra Saha v. Bairab Chandra Saha ..F..11	
C W N 107=33 C 278 597	
9 C W N 873, Parsidh Narain Singh v. Ghanshyam Narain Singh...Diss..	
33 C 899 288	
9 C W N 1061, Protap Chandra Chatterjee v. Durga Charan Ghose...F...10 C W N	
1081=33 C 821 859	
10 C W N 121, Behari Lal Laha v. Kailas Chunder Laha...R...16 M L J 178=29	
M 437 472	
10 C W N 309, Ratan Chand Aswal v. Dem- nath Bama...F...1 M L T 395=16 M	
L J 548 684	

* This is a mistake for 2 A L J 71.

† This is a mistake for 2 C L J 50.

†† This is a mistake for 33 C 947.

§ This is a mistake for 1 C W N 121.

KK

10 C W N 499=3 C L J 222, Krishna Chandra Dutt v. Miran Bajajia...F...10 C W	
N 719=4 C L J 306=33 C 1094...561	
10 C W N 581, Rai Budreesdas v. Chuni Lal...R	
...10 C W N 867=33 C 905 ... 219	
A W N (1906), 260=3 A L J 773... 297	
10 C W N 787, Shyama Charan Bhattacharya v. Akhoy Kumar Mitter...R...10 C W	
N 952=33 C 1010 364	
10 C W N 921=4 C L J 171, Kanneppalli v. Pucha...Expl and Distd...4 C L J 357	
=11 C W N 12=33 C 1306 ... 472, 478	
10 C W N 1102 Foot-note (1892), Sree Nath Roy v. Brojendra Bhusan Chatterjee...F...	
10 C W N 1102 252	

Madras High Court Reports.

1 M H C R 415, Purappavana Liggam Chetty v. Nullasivan Chetty...R...29 M 1	
... .. 515	
1 M H C R 448, Kamakshi Achari v. Appavu Pillai...D...1 M L T 106 ... 45	
2 M H C R 296, Stephen Clark v. Ruthnavaloo Chetty...R...21 T L R 211 ... 848	
3 M H C R 298, Parimi Baparaaju v. Bellam Kond, Chinna Venkayya...R...U B R	
(1906) Tort 5 603	
3 M H C R 702 *, Venkatramanaiya v. Kuppi ...F...24 P L R 1906 ... 302	
4 M H C R 2, Jayangarulavaru v. Sri Hati Durma Dossji...F...15 M L J 475=29	
M 106 501	
4 M H C R 70, Basappa v. Venkatappa...R...	
1 M L T 381 (F.B.)=16 M L J 514	
... .. 117	
4 M H C R 119, Palaneappa Chetty v. Rayappa Chetti...R...U B R Specific Relief 30	
... .. 861	
† 6 M H C R 87, Saravana Tevan v. Muttayi Ammal...R...3 A L J 274=A W N	
(1906) 117=28 A 508... .. 476	
7 M H C R 77, Venkatesa Naidu v. Shri- man Shadagopa Shri Shatagopa Sami	
...F... J M L T 127=16 M L J 435	
... .. 17	
7 M H C R 260, Sami Chetti v. Ammani Achy ...R...9 O C 339. 821	
7 M H C R 290, Vasudeva Shanbhaga v. Kule- adi Narnapni...R...9 O C 399 .. 821	

* This is a mistake for 3 M H C R 202.

† This is a mistake for 6 M H C R 671.

8 M H C R 14, Kandoth Mammi v. Neelan
Cherayil Abdu Kolaudan...R...196 P R
1906 146 & 147

Madras Law Journal.

6 M L J 33, Pangutechan v. Parameswara
Pattar...overruled...1 M L T 153
(F.B.)=29 M 396=16 M L J 395... 890
10 M L J 110, Thaleri Pathumma v. Thandora
Mammad...R...157 P L R 1306... 921
11 M L J 7, Krishnaswami Ayyangar v. Sriniva-
sa Ayyangar...Diss...29 M 170=16
M L J 133 706
11 M L J 130, Narayanasami v. Jambu Aiyar
..R...1 M L T 237=16 M L J 385=29
M 477 44
11 M L J 215, Nagiah Bathudu v. Mathacharry
..F...2 C L J 500=32 C 1072=10 C
W N 505 204 & 205
12 M L J 355, Narayanasami Gurukkal v.
Iruappa..F...15 M L J 475=29 M
106 501
13 M L J 23, Raja Simhadri Appa Raw v.
Ramachandradu...overruled...16 M L
J 41=1 M L T 25=29 M 195 .. 207
13 M L J 75, Mahadeva Pandia v. Rama Nar-
yana Pandia...R...29 M 121 .. 50
13 M L J 217, Achutan Nambudri v.
Koinan Nair...approved & followed...
1 M T 153 (F.B.)=29 M 396 16 M L J
395 890
13 M L J 323, Narasimhan v. Madavarayulu,
..F...29 M 120 881
14 M L J 139, Kalliyar v. Subba...R...33 C 1079
.. .. 516
14 M L J 337, Butchiraju v. Ramalinga Murthy
..D...29 M 531 895
15 M L J 243, Cherathi Amma v. Raman Nair
..R...A W N (1906) 97=3 A L J 324
.. .. 180
15 M L J 361, Muthusami Pillai v. Arunachel-
lam Chettiar...F...16 M L J 489=1 M
L T 331 110

Madras Law Times.

1 M L T 406, Madasami Asari v. Pochi Muthu
Asari...R...1 M L T 237=16 M L J 385
=29 M 477 44
1 M L T 199 (F.B.), Maniram v. Seth Rupchand
..F...1 M L T 313=16 M L J 503=29
M 519 593

North West Provinces High Court Reports.

1 N W P H C R 224, Isree Singh v. Shurfuddin
..R...9 O C 129 (B) 133
2 N W P 370, Zuburdast Khan, &c. res...F...84 P
R 1906=148 P L R 1906 .. 648

3 N W P H C R 217, Rai Nursingh Das v. Rai
Narain Das...Refd. to...A W N (1906)
84=3 A L J 155=28 A 347 .. 468

6 N W P H C R 412, Nautat Rai v. Bajrangi
Lal...D...A W N (1906), 180=3 A L J
848 757

7 N W P H C Rep 60, Musammat Nousha
Begam v. Musammat Umrao Begam
..R...9 O C 235 212

N W P H C Rep (1874) 377, Shaikh Karim
Buksh v. Kamr-ud-deen...R...A W N
(1905), 217=2 A L J 619=28 A 127
.. .. 648

Oudh Cases.

1 O C 225, Gaya Singh v. Bhaiya Tribhuwan
Datt...overruled...9 O C 76 (B)... 185

1 O C 289, Bhagwan Bakhsh v. Chandi Dat
..R...9 O C 801 119

2 O C 3, Gopal v. Sant Bakhsh...R...9 O C 161
.. .. 740
...R...9 O C 273
.. .. 884

2 O C 7, Ram Charan v. Kiamuddin...R...9 O
C 169 (B)... .. 752

2 O C 9, Fakhruddin Ahmed v. Musammat
Rasulam...R...9 O C 331 767

2 O C 73, Mehdi Ali Khan v. Gurdin...R...9 O
C 109 562

2 O C 79, Ashik Ali v. Muzhar Ali...R...9 O C
292 741, 742

2 O C 87, Mohammad Husain v. Syed Jahan
Begam...F...9 O C 153 872

2 O C 226, Rasant Singh v. Muna Kuar...R...
9 C 119 (B) 520, 521

2 O C 244, Ram Lall v. Musammat Jani
Begam...R...9 O C 113 (B) .. 134

3 O C 105, Sital Singh v. Lachman Kuar...R...
9 O C 292 741 & 742

3 O C 213, Dhan Singh v. Bodh Singh...R...9
O C 169 (B) 752

3 O C 316, Lachmi Narain v. Ram Prasad...F
..9 O C 269 (B) 590

4 O C 264, Balgobind v. Raja Rampal Singh
..D...9 O C 87 (B) 137

4 O C 303, Shameshwar Dat Singh v. Maha Deo
Perahia Singh...R...9 O C 65 .. 745

4 O C 314, Lal Jang Bahadur Singh v. Bisesh-
war Bakhsh Singh...R...9 O C 292
.. .. 741 & 742

4 O C 372, Jung Bahadur v. Baghura Singh
..R...3 O L J 545=10 C W N 986=
33 C 323, 588

5 O C 181, Manni Lal & Bhagwan Das...R...
9 O C 243 (B) 210

5 O C 197, Matadin v. Ali Mirza...R...9 O C 97 649	86 P R 1877, Shibbu Mul v. Paira Singh...R... 100 P R 1905=16 P L R 1906 ... 415
5 O C 222, Jang Bahadur v. Ehsan Ali...R... 9 O C 296 ... 925	82 P R 1878, Chowdri Hiat v. Jai Kishen...R... 118 P R 1906 ... 141
5 O C 266, Select Cases Nos. 140 and 177 and Drighi Jai Singh v. Court of Wards Ramnagar Estate...R...9 O C 271 (B) 186	66 P R 1878, Khan Mulla v. Fazlur...over- ruled...74 P R 1906=187 P L R 1906 760
5 O C 285, Lachimi Narain v. Babu Sheo Dayal Singh...F...9 O C 283 ... 681	68 P R 1879, Musammat Shakro v. Molar Mal ...D...120 P R 1906 ... 769
5 O C 345, Itraj Koer v. Bacha Madho Kuar ...R...9 O C 118 (B) ... 184	93 P R 1879, Ram Singh v. Nodh Singh...R... 100 P R 1905=16 P L R 1906 ... 415
6 O C 16, Bachu Lal v. Kandhai Lal...R...9 O C 815 ... 777	97 P R 1880, Kalan Khan v. Ram Sarn...R... 129 P R 1906 ... 600
6 O C 379, Khatir Khan v. Tabwand Khan ...R...9 O C 889 ... 821	120 P R 1880, Ghulam Muhammad v. Jiwan ...R...46 P L R 1906 ... 150
7 O C 116, Maharaja Partab Narain Singh v. Ragho Behari...R...9 O C 296 ... 925	174 P R 1880 †, Zainab v. Amir...Refd. to...19 P R 1906=70 P L R 1906 ... 886
8 O C 21, Chandi Singh v. Jangi Singh ...F...9 O C 104 ... 506	10 P R 1881, Karm v. Fazal...F...92 P R 1906 =196 P L R 1906... .. 599
8 O C 118, Mohammad Siddique v. The Secre- tary of State for India in Council...R ...9 O C 815 (B) ... 57	... ..R...129 P R 1906 600
8 O C 145, Maharaja Jagatjit Singh v. Suraj Bakhsh Singh...R...9 O C 167 (B) 182	14 P R 1881, Nathu Singh v. Rura...R...100 P R 1905=16 P L R 1906 ... 415
8 O C 174, Jagmohan Singh v. Dan Baha- durpal Singh...R...9 O C 87 (B)...187	92 P R 1881, Dalla Singh v. Ala Singh...R...46 P L R 1906 ... 150
8 O C 177, Thakur Sheo Narain Singh v. Bodal Singh...F...9 O C 82 *... 810	2 P R 1882 (F.B.), Kesar Singh v. Ganga Singh ...Refd. to...2 P L R 1906 ... 882
8 O C 288, Agha Hossain v. Wazir Khan...R... 9 O C 308 ... 767	25 P R 1882, Miran Bakhsh v. Allajawai...Refd. ...to...19 P R 1906=70 P L R 1906...886
9 O C 86, Mirza Mohammed Abbas Ali Khan Bahadur v. A Quieros...R...9 O C 881 767	46 P R 1882, Labhu Singh v. Gurditta...R... 140 P R 1906 ... 406 & 407
9 O C 161, Wajid Khan v. Dargahi Khan...R... 9 O C 280 ... 157	49 P R 1882, Mohammad Hassan v. Ghani Bhakhsh...R...76 P L R 1906 ... 165
9 O C 225, Shahamat Hussain v. Murli Prasad ...R...9 O C 322 ... 222	62 P R 1882, Paltu v. Mohammad Hussain ...F...56 P R 1906=101 P L R 1906 145
9 O C 296, Musammat Raj Kuar v. Nabi Bakhsh...R...9 O C 302 ... 566	117 P R 1882, Jawahir Singh v. Nand Singh ...overruled...74 P R 1906=187 P L R 1906 ... 760
Punjab Record.	181 P R 1882, Bhai Badan Singh v. Partap Singh...R...46 P L R 1906 ... 150
82 P R 1868, Muhammad Khan and another v. Fida Muhammad...R...76 P L R 1906 ... 165	146 P R 1882, Kamman v. Budh Singh...Distd... 88 P R 1906 ... 604
61 P R 1878, Kallan Das v. Buta...R...52 P R 1906=192 P L R 1906 ... 727	154 P R 1882, Sohava Mal v. Chatt Mal...R... 99 P R 1906=190 P L R 1906 ... 401
62 P R 1878, Hamilton and Co v. Shovers...R... 187 P R 1906 ... 349	... ..R... 140 P R 1906 ... 406 & 407
4 P R 1876, Jani v. Gulam Farid Khan...R... 52 P R 1906...102 P L R 1906 ... 727	189 P R 1882, Mehtab Roy v. Amir Chand...R ... 68 P R 1906=123 P L R 1906...397
124 P R 1876 (F.B.), Nowros Ali v. Musammat Amir Bhai...F...85 P R 1906=148 P L R 1906 ... 649	20 P Q 1883, Baldeo v. Sheodan...R...66 P R 1906 ... 867
	77 P R 1883, Sharifulla v. Jamal Khan...R... 8 P R 1905 (Rev)=54 P L R 1906...143

*This is a mistake for 9 O C 82.

† This is a mistake for 174 P R 1880.

175 P R 1883, Ahmad Din v. Mussammat Fazan...R...59 P L R 1906 ... 334	
194 P R 1883, Muhammad Bakhshi v. Morton ...overruled...49 P R 1906 (F. B.)= 106 P L R 1906 ... 184	
58 P R 1884, Chiragh v. Chanuman...R...8 P R 1906=66 P L R 1906 ... 384	
60 P R 1884, Gurditta Mal v. Sultan Muhammad...R...144 P R 1906 ... 36	
101 P R 1884, Bawa Soban Singh v. Pula...R... 106 P R 1906 ... 404	
134 P R 1884, Mussammat Khan Bibi v. Pir Shah ...F... 85 P R 1906=148 P L R 1906 ... 648	
138 P R 1884, Ram Nath v. Maharaj ...R...30 P R 1906=82 P L R 1906 ... 284	
162 P R 1884, Nehal Singh v. Sowaya Singh ...D...43 P R 1906=122 P L R 1906 ... 832	
38 P R 1885, Nihal Singh v. Dula Singh...Appr ... A W N(1905), 282=3 A L J 16=28 A 281 ... 621	
10 P R 1886, Gobind Ram v. Sayad Ahmad...R ...68 P R 1906=123 P L R 1906...397	
100 P R 1886, Prema v. Jowahir Singh...cited and F...16 P R 1906=66 P L R 1906 ... 387, 388	
108 P R 1886, Ralia Ram v. Kallan Khan...R ...68 P R 1906=123 P L R 1906 ...397	
20 P R 1887, Bahnokand v. Ramji Lal...R ... 100 P R 1906=16 P L R 1906 ... 415	
24 P R 1887, Muhammad Salamatullah v. Jalal-ud-din...R...68 P R 1906=123 P L R 1906... 397	
82 P R 1887, Firdaus Khan v. Bahram Khan ...R...94 P R 1906 ... 14	
89 P R 1887, Jiwan v. Wazir...R...8 P R 1906 =66 P L R 1906 ... 384	
64 P R 1887, Nanni Mal v. Sheo Nath...R... 111 P R 1906 ... 768	
120 P R 1906 ... R... 769	
76 P R 1887, Mussammat Deoki v. Kala...R... 11 P L R 1906 ... 782	
77 P R 1887, Shadi v. Sain Ditta...D...43 P R 1906=122 P L R 1906 ... 832	
107 P R 1887 (F.B.), Gujar v. Skani Das...R... 106 P R 1906 ... 404	
4 P R 1888, Mussammat Sardar Bibi v. Sayad Ali Shah ...Refd to and Distd...16 P R 1906=66 P L R 1906... 387 & 388	
92 P R 1888, Sheikh Shahryar v. Imam-ud-din...R...68 P R 1906=123 P L R 1906 ... 897	

83 P R 1888, Chaudhri Khem Singh v. Mussammat Taj Bibi...R...42 P R 1906 ... 378	
67 P R 1906 ... 396	
68 P R 1906=123 P L R 1906 ... 397	
†38 P R 1888, Chaudhri Khem Singh v. Taj Bibi ...R...57 P R 1906=100 P L R 1906 ... 390	
89 P R 1888, Na'ir-ud-din Shah v. Mussammat Lal Bibi...Refd. to & Distd...16 P R 1906=66 P L R 1906... 387 & 388	
185 P R 1888, Ramchand v. Muhammad Khan ...F...7 P R 1906 (Rev)=68 P L R 1906 ... 146	
188 P R 1888, Bawa Lehna Singh v. Jagan Nath...R...76 P L R 1906 ... 165	
154 P L R 1906 ... 766	
161 P R 1888, Ghulam Husain v. Shahbaz Khan ...R... 135 P R 1906 ... 226	
165 P R 1888, Punja Bam v. Mussammat Niki Bai ...R... 42 P R 1906 ... 378	
57 P R 1906=100 P L R 1906 ... 390	
169 P R 1888, Bhag Mal v. Mohra ...Appr... 46 P R 1906=94 P L R 1906 ... 372	
183 P R 1888, Karam Baksh v. Daulatram ...R...3 C L J 545=10 C W N 986=33 C 323 ... 588	
* 1 P R 1889 (F.B.), Sunder Singh v. Kishan Chand...D...31 P R 1906=133 P L R 1906 ... 33	
† 26 P R 1889, Baru Mal v. Amir-ud-in...F... 121 P R 1906 ... 141	
40 P R 1889, Swan Mal v. Wasu Ram...R...77 P R 1906... 398	
54 P R 1889, Hajji Muhommed v. Mussammat Bukhto...R...23 P R 1906=107 P L R 1906... 755	
* 80 P R 1889, Kulo Shah v. Shahabul Shah ...R...30 P R 1906=82 P L R 1906 ... 234	
103 P R 1889, Ankar Lal v. Baij Nath...R...110 P L R 1906 ... 140	
136 P R 1889, Ram Singh v. Nehal Singh 112 P R 1906 ... 803	
146 P R 1889, Mussammat Rani v. Makhi and Others...cited & discussed...15 P R 1906=117 P L R 1906 ... 387	

†This is a mistake for 83 P R 1888.

* This is a mistake for 1 P R 1899 (F.B.)

‡ This is a mistake for 26 P R 1899.

¶ This is a mistake for 80 P R 1899.

¶This is a mistake for 33 P R 1885.

TABLE OF CASES, OVER-RULED, FOLLOWED, &c.

KCI

154 P R 1889, Gahna v. Ikhlās Khan... Distd... 88 P R* 1906 ... 604	111 P R 1891, Shibbo v. Buta... cited & discussed... 15 P R* 1906=117 P L R 1906 ... 387
156 P R 1889, Kale Khan v. Seva Ram... R... 127 P R 1906 ... 349	119 P R 1891, Imam Din v. Nanu... cited & F... 18 P R 1906=114 P L R 1906 ... 388
69 P R 1906=118 P L R 1906 ... 492	* 4 P R 1892 (F. B.), Gholam Muhammad v. Muhammad Baksh ... F... 117 P R 1906 ... 406
160 P R 1889, Gaffar Khan v. Sattar ... F... 112 P L R* 1906 ... 616	12 P R 1892, Sita Ram v. Raja Ram ... R... 88 P R 1906=149 P L R 1906 ... 399
170 P R 1889, Haji Ala Dad and Munawar Din v. Nur Mustafa and others... R... 42 P R 1906... 878	117 P R 1906 ... 406
57 P R 1906=100 P L R 1906 ... 390	15 P R 1892 (F. B.), Dhani Das v. Aya Ram ... D... 52 P R 1905=102 P L R 1906 ... 726
177 P R 1889, Eda Khan v. Amiro... cited and discussed... 15 P R 1906=117 P L R 1906 ... 387	57 P R 1892, Banarsi Das v. Sayad Sultan Mirza... F... 9 P R (Rev) 1905=65 P L R 1906 ... 148
188 P R 1889, Samaud Khan v. Munawar Khan... R... 23 P R 1906=107 P L R 1906 ... 755	89 P R 1892, Mussamat* Rakhi v. Mussamat, Fatima... Refd. to... 10 P R 1906=70 P L R 1906 ... 396
P R (1889) 681, Fazil Ilahi v. Yakub Mirza... R... 9 O C 97 ... 649	122 P R 1892, Kadman v. Amir Bibi... R... 8 P R 1906=66 P L R 1906 ... 384
25 P R 1890, Rahmat Hussain v. Mussammamat Fahim-un-nissa... Refd to and Distd... 16 P R 1906=66 P L R 1906 ... 387	27 P R 1893, Gajjan v. Bhopa... D... 74 P R 1905=197 P L R 1906 ... 760
16 P R 1906=66 P L R 1906 ... 387	30 P R 1893, Kalu v. Bhupa... R... 129 P R 1906 ... 600
25 P R 1890, Rahmat Hussain v. Fahim-un-nissa... D... 18 P R 1906=114 P L R 1906 ... 388	46 P R 1893, Yaru v. Adil... D... 52 P R 1906=102 P L R 1906 ... 727
47 P R 1890, Mussammamat Dyau v. Jai Ram... R... 35 P R 1905=47 P L R 1906... 389	50 P R 1893 (F.B.), Ralla v. Budha... Refd to... 12 P R 1906=108 P L R 1906 ... 386
87 P R 1890, Kishan Dial v. Ali Baksh... R... 42 P R 1906 ... 378	P L R 1906=51 P R 1906 ... 407
* 122 P R 1890, Bawa Sukhrum Das v. Burham Puri... Refd to... 13 P L R 1906... 383	64 P R 1893, Lokha v. Hari... considerd & discussed... 110 P R 1906(F.B.)... 405
126 P R 1890, Ladhu v. Daulati... F... 93 P R 1906 ... 400	71 P R 1893, Suba v. Mohra... cited & F... 16 P R 1906=66 P L R 1906 ... 387 & 388
150 P R 1890, Radhu v. Mussammamat Nando ... R... 46 P L R 1906 ... 150	+ 76 P R 1893, Varyam Singh v. Man Singh ... R... 18 P R 1906=149 P L R 1906 ... 399
4 P R 1891 (F.B.), Ghulam Muhammad v. Muhammad Baksh... Refd. to... 29 P L R 1906 ... 385	77 P R 1893, Mussammamat Aso and another v. Mussammamat Tabi and others... Refd. to ... 15 P R 1906=117 P L R 1906 ... 387
44 P R 1891, Joti v. Maya... R... 32 P R 1906 ... 144	100 P R 1893, Ganda Singh v. Maya... R... 35 P R 1906 ... 303
56 P R 1891, Puran v. Raj Devi ... cited and discussed... 15 P R 1906=117 P L R 1906 ... 387	101 P R 1893, Karm Din v. Gurditta... R... 35 P R 1906 ... 303
1906 ... 397	108 P R 1893, Bahadur v. Bholi... R... 8 P R 1906=60 P L R 1906 ... 384
60 P R 1891, Uttam Singh v. Dharam Singh... R... 29 P R 1906=97 P L R 1906... 829	
79 P R 1891, Aja Baksh v. Buta... F... 98 P R 1906 ... 400	
86 P R 1891, Badri Das v. Jwala Pershad... R... 127 P R 1906 ... 349	
98 P R 1891, Mussammamat Jiwi v. Gahiya ... Expl... 128 P L R 1906 ... 407	

* This is a mistake for 4 P R 1891.

+ This is a mistake for 72 P R 1893.

188 P R 1893, Bahadur Singh and others v. Mussammat Nihali... <i>cited and discussed</i> ...15 P R 1906=117 P L R 1906	82 P R 1895, Lehna and another v. Mussammat Thakri and another... <i>R</i> ...91 P R 1906... 399
12 P R 1894, Jhoki Ram v. Malik kadir Bakhsh ... <i>R</i> ...144 P R 1906 ... 86	50 P R 1895, Sodhi Kartar Singh v. Sher Singh ... <i>cited & F</i> ...16 P R 1906=66 P L R 1906 ... 387 & 388
52 P R 1894, Bhup Singh v. Beechey... <i>over-ruled</i> ...49 P R 1906 (F.B.)=106 P L R 1906 ... 184	51 P R 1895 (F.B.), Grey v. Lachman Das... <i>R</i> ...49 P R 1906 (F.B.)=106 P L R 1906 ... 184
81 P R 1894, Rasul Khan v. Mastur Bano... <i>R</i> ...8 P R 1906=66 P L R 1906 ... 384	67 P R 1895, Malik Akbar Ali v. Hassan Ali ... <i>F</i> ...48 P R 1906 (F.B.)=104 P L R 1906 ... 759
92 P R 1894, Ali Bakhsh v. Nathu ... <i>R</i> ...96 P R 1905=52 P L R 1906 ... 389	78 P R 1895 (F.B.), Ramji Lal v. Tej Ram ... <i>Disc</i> ...62 P R 1906=186 P L R 1906 ... 396
95 P R 1894, Wasir Ali v. Asa Ram ... <i>R</i> ...11 P L R 1906 ... 792	77 P R 1895, Ganpat Rai v. Gokal Chand... <i>over-ruled</i> ...109 P R 1906 (F.B.) ... 249
... <i>F</i> ...27 P R 1906 ... 787	125 P R 1906 ... 301
96 P R 1894, Dilsukh Ram v. Natha Singh... <i>R</i> 74 P R 1906=137 P L R 1906... 760	80 P R 1895, Ragnath Sahai v. Mam Raj... <i>F</i> ...131 P R 1906 ... 353
103 P R 1894, Nanak Chand v. Mussammat Dayan ... <i>cited and F</i> ...12 P R 1906=108 P L R 1906 ... 386	89 P R 1895, Bahadur Khan v. Sardar... <i>R</i> ...189 P R 1906 ... 147
116 P R 1894, Narnin Singh v. Gurmukh Singh ... <i>R</i> ...35 P R 1906 ... 393	90 P R 1895 (F.B.), Bhandari v. Jasodhan... <i>R</i> ...65 P R 1906 ... 693
\$ 178 P R 1894, Jehnu v. Saudagar... <i>R</i> ...124 P L R 1906=51 P R 1906 ... 407	97 P R 1895, Indrag v. Mouja... <i>R</i> ...11 P L R 1906 ... 782
188 P R 1894, Jehnu v. Saudagar... <i>R</i> ...51 P R 1906=124 P L R 1906 ... 394	99 P R 1895, Ganda Mal v. Dheri Shah... <i>R</i> ...74 P L R 1906 ... 794
1 P R 1895 (Rev), Sube Khan v. Rahmat Ali ... <i>R</i> ...8 P R 1905 (Rev)=64 P L R 1906 ... 143	100 P R 1895, Jagdish v. Man Singh... <i>D</i> ...145 P R 1906... 764
10 P R 1895, Chakar Dar v. Ghapila... <i>R</i> ...48 P R 1906 (F.B.)=104 P L R 1906 ... 757	108 P R 1895, Mussammat Nur Jahan v. Aziz-ud-din... <i>R</i> ...111 P R 1906 ... 768
15 P R 1895, Fatta v. Bakhra... <i>R</i> ...8 P R 1906=66 P L R 1906 ... 384	108 P R 1895, Mussammat Nur Jahan v. Aziz-ud-din... <i>R</i> ...120 P R 1906 ... 769
17 P R 1895, Raman Mal v. Bhagat Ram... <i>R</i> ...81 P R 1906 ... 398	18 P R 1896, Jehhri v. Jowahira... <i>considered and discussed</i> ...110 P R 1906 (F.B.) ... 405
17 P R 1895, Raman Mal v. Bhagat Ram... <i>F</i> ...111 P R 1906 ... 768	21 P R 1896, Uttam Singh v. Jhanda Singh... <i>R</i> ...106 P R 1906 ... 404
18 P R 1895, Roda v. Harnam ... <i>Refd to</i> ...2 P L R 1906 ... 382	52 P R 1896, Masta v. Pohlo... <i>R</i> ...74 P R 1906=137 P L R 1906 ... 760
18 P R 1895 (F.B.), Roda v. Harnam... <i>R</i> ...41 P R 1906=95 P L R 1906 ... 527	58 P R 1896, Rao Ghulam Muhammad Khan v. Nahar Ali... <i>F</i> ...24 P L R 1906... 302
... <i>D</i> ...106 P R 1906 ... 623	69 P R 1896, Mussammat Khan Bai v. Bhowani Das and another... <i>Refd to</i> ...15 P R 1906=117 P L R 1906 ... 387
20 P R 1895, Mussammat Chand Kour v. Ram Singh and others... <i>cited & discussed</i> ...15 P R 1906=117 P L R 1906 ... 387	71 P R 1896, Collins v. Ten Brooks... <i>R</i> ...184 P R 1906 ... 655
20 P R 1895, Chand Kaur v. Ram Singh... <i>R</i> ...72 P R 1906 ... 397	73 P R 1896, Sham Ram v. Harni Bai... <i>considered and discussed</i> ...110 P R 1906 (F.B.)... 405
23 P R 1895, Mussammat Indra Bai v. Godu Dhar... <i>D</i> ...107 P R 1906 ... 820	77 P R 1895, Kirpa Ram v. Ude Ram... <i>F</i> ...102 P R 1906... 402

*This is a mistake for 188 P R 1894.

79 P R 1896, Bakhsha v. Mir Baz ... <i>cited</i> and F...8 P R 1906=66 P L R 1906=...384	84 P R 1898 (F.B.), Harvans Singh v. Harnam Singh... <i>Refd. to</i> ...2 P L R 1906... 382
5 P R 1897, Ishra Singh v. Jhanda...R...118 B R 1906 141	—, Harvans Singh v. Harnam Singh ...R...97 P R 1906 400
15 P R 1897 (Or.) (F.B.), Shiroore v. Queen Em- press...F...49 P R 1906 (F.B.)= 106 P L R 1906 184	76 P R 1906=125 P L R 1906 ... 616
19 P R 1897, Nihal v. Mohlar...R...91 P R 1906 899	88 P R 1898, Moti Ram v. Kamman... <i>overrul-</i> <i>ed</i> ...48 P R 1906 (F.B.)=104 P L R 1906 759
28 P R 1897, Mussammat Fakhar-un-Nissa v. Malik Rahim Bakhsh...R...54 P R 1906 891	94 P R 1898, Kartar Singh v. Mathar Singh ... <i>cited</i> and F...12 P R 1906=108 P L R 1906 886
27 P R 1897, Hira Lal v. Khuda Bakhsh...R ...110 P L R 1906 140	3 P R 1899, Gityan Prakash v. Huzura Singh ... <i>Refd. to</i> ... 13 P L R 1906 ... 883
... .. 753	9 P R 1899, Sher Muhammad v. Phula... <i>cited</i> & F...8 P R 1906=66 P L R 1906...384
32 P R 1897, Kirpa Ram v. Krishna Singh ...D...49 P R 1906 (F.B.)=106 P L R 1906 184	22 P R 1899, Ghulam Muhammad v. Abbas Khan...R... 8 P R 1906=66 P L R 1906 884
36 P R 1897, Nawab Muhammad Mumtaz Ali Khan v. Khan Ali...F...67 P R 1906 896	26 P R 1899, Baru Mal v. Amir-ud-din...R... 29 P R 1906=97 P L R 1906 ... 829
74 P R 1897, Kadir Bakhsh v. Ghulam ...R... 110 P L R 1906 140	30 P R 1899, Mussammat Sarsuti v. Ishri Parshad...R...132 P R 1906...258 & 259
76 P R 1897, Mussammat Deoki v. Kala ...D... 27 P R 1906 787	35 P R 1899, Moman v. Ishri Parshad...D...65 P R 1906... .. 693
1 P R 1898 (Rev), Jiwan Singh v. Maharaja Jagat Singh...F... 7 P R 1906 (Rev) =68 P L R 1906 146	58 P R 1899, Devi Das v. Bhakra... <i>cited</i> & F... 8 P R 1906=66 P L R 1906 ... 384
46 P R 1898, Aulia v. Alu ... <i>cited</i> & F... 8 P R 1906=66 P L R 1906 384	61 P R 1899, Allah Bakhsh v. Mussammat Anir Begum...F...85 P R 1906=148 P L R 1906 648
* 50 P R 1898 (F. B.) Ralla v. Budha ...R... 51 P R 1906=124 P L R 1906 ... 394	1 P R 1900*, Mussammat Bibi Hukam Kaur v. Sardar Asa Singh...R...135 P R 1906 226
55 P R 1898, Municipal Committee Ambala v. Bhagwan Das...R...111 P R 1906 235	4 P R 1900, Sher Singh v. Kishen Singh...R... 83 P R 1906=149 P L R 1906 ... 399
61 P R 1898, Shaman v. Sardha...R...95 P R 1905=47 P L R 1906 389	6 P R 1900* Khairati v. Mannu Khan...R...128 P L R 1906 407
61 P R 1898, Rukan Din v. Mussammat Maryam ...R...100 P R 1906... .. 401	21 P R 1900=P L R (1900) p 170, Karam Ilahi v. Babua Mal...R...110 P L R 1906 140
70 P R 1898, Umar Bakhsh v. Abdul Karim ...R...110 P L R 1906 140	21 P R 1900, Karam Ilahi v. Babu Mal...D... 120 P R 1906 769
—, Umar Bakhsh v. Abdul Karim and Others...R...42 P R 1906 ... 378	34 P R 1900=P L R (1900) P. 447, Ahmad Shah v. Mussammat Talia Bibi ... <i>Refd. to</i> ...99 P L R 1906 ... 385
75 P R 1898, Arur Singh v. Mussamat Lachmi...R...35 P R 1906 ... 398	85 P R 1900, Mussammat Mehr Nishan v. Nawabzada Muhammad Kazim Ali Khan...D...95 P R 1906 ... 26
—, Amar Singh v. Lachmi...F...98 P R 1906 400	—...R...96 P R 1906 ... 27
77 P R 1898, Sardar Umrao Singh v. Sardar Thakar Singh...R...92 P R 1905=50 P L R 1906... .. 484	41 P R 1900, Ishar v. Ganda Singh ...R... 35 P R 1906... .. 393
84 P R 1898, Harvans Singh v. Harnam Singh ...F...24 P R 1906=36 P L R 1906 373, 379	46 P R 1900, Nura v. Tara ... <i>cited</i> & F...8 P R 1906=66 P L R 1906 ... 384

* This is a mistake for 50 P R 1898.

* This is a mistake for 6 P R 1900 (Rev).

47 P R 1900, Abdul Hakim v. Musammat Bilochini...R... 54 P R 1906 ... 391	103 P R 1901 (F.B.), Atar Singh v. Ralla Ram ...F...129 P R 1906 ... 600
58 P R 1900, Natha Singh v. Billu Singh...R... 99 P R 1906=180 P L R 1906 ... 401	107 P R 1901, Harnam Singh v. Devi Chand ...cited & F...12 P R 1906=108 P L R 1906 ... 386
140 P R 1906 ... 406 & 407	108 P R 1901, Musammat Zimat v. Murtaza Khan ...Dist... 83 P R 1906 ... 604
111 P R 1906 ... 768	21 P R 1902, Sant Singh v. Ghasita...R...128 P R 1906... 259
113 P R 1906 ... 768	25 P R 1902 (P.C.)=1 P R (Digest) 1902, Ghulam Jilani v. Muhammad Hassan...D ...88 P L R 1906 ... 289
74 P R 1900, Musammat Shah Khanam v. Kolandar Khan...F...41 P R 1906=95 P L R 1906 ... 527	42 P R 1902, Amir v. Musammat Zabo...R... 35 P R 1906 ... 393
103 P R 1900, Khudayar v. Sultan...considered & discussed...110 P R 1906 (F.B.) ... 405	52 P R 1902, Hayat Muhammad v. Fazl Ahmad...R...8 P R 1906=66 P L R 1906 ... 834
106 P R 1900, Udmi v. Kirpa Ram...F...139 P R 1906 ... 147	58 P R 1902, Maman Mal v. Abdul Aziz...Appr... 46 P R 1906=94 P L R 1906 ... 372
107 P R 1900, Ali Muhammad v. Kadir Bakhsh ...doubted...68 P R 1906=123 P L R 1906 ... 397	68 P R 1902, Nanak Chand v. Ram Chand, ...D...22 P R 1906=145 P L R 1906 ... 754
109 P R 1900, Mela Ram v. Prema...R...68 P R 1906...123 P L R 1906 ... 397	74 P R 1902, Muhammad Anwar-ul-Hag v. Habib-ul-Rahman ... cited & F...18 P R 1906=114 P L R 1906 ... 388
112 P R 1900, Fattah Ali v. Abdullah...Refd. to .. 15 P R 1906=117 P L R 1906...387	*76 P R 1902, Coates v. Kashi Ram...R...128 P R 1906 ... 259
112 P R 1900, Fattah Ali v. Abdullah...R...91 P R 1906... 399	96 P R 1902, Jai Narain v. Sultan Muhammad Khan...R...114 P R 1906 ... 346
2 P R 1901, Dilawar and others v. Jatti and others...F...93 P R 1906 ... 400	98 P R 1902=18 P L R 1903, Prabh Dial v. Gurmukh...R...11 P L R 1906 ... 782
26 P R 1901, Ali Muhammad v. Dulla ...R...8 P R 1906=66 P L R 1906 ... 384	—, Prabh Dial v. Gurmukh...F...27 P R 1906 ... 787
43 P R 1901, Baz Khan v. Sultan Malik ...R... 90 P R 1906 ... 621	101 P R 1902=22 P L R 1903, Ghulam Shah v. Zain Shah...R...59 P L R 1906... 394
45 P R 1901, Chaudhri Lila Kisher v. Chaudhri Hoa Ram ...D... 45 P R 1906=120 P L R 1906 ... 758	2 P R 1903, Kishan Singh v. Jai Kishan Das ...R... 23 P R 1906=107 P L R 1906 ... 755
54 P R 1901 (F.B.), Umar Din v. Ala Bakhsh...F... 9 P R 1906 (Rev)=65 P L R 1906...148	111 P R 1906 ... 768
75 P R 1901, Phumman Mal v. Keman...R...22 P R 1906=115 P L R 1906 ... 754	+ 15 P R 1903=55 P L R 1905, Labh Singh v. Gopi and others ...Refd. to... 2 P L R 1906 ... 892
77 P R 1901, Vir Bhan v. Mattu Shah...R...22 P R 1906=115 P L R 1906 ... 754	97 P R 1906 ... 400
82 P R 1901, Jawanda Mal v. Muhammad Ali ...R...111 P R 1906 ... 235	17 P R 1903, Babu Mal v. Sardar Singh...F... 67 P R 1906 ... 396
84 P R 1901=112 P L R 1901, Jhangi Ram v. Budho Bai...F...38 P L R 1906... 289	120 P R 1903 ... 768
86 P R 1901, Imam Din v. Gulam Muhammad ...R...42 P R 1906 ... 378	19 P R 1903, Hayat Muhammad v. Ala Bakhsh ...D...91 P R 1906 ... 399
68 P R 1906=123 P L R 1906 ... 397	
89 P R 1901, Prem Singh v. Labh Singh...Refd. to...18 P L R 1906 ... 383	
92 P R 1901=143 P L R 1901, Musammat Karam Bibi v. Hussain Bakhsh...R... 59 P L R 1906 ... 394	

*This is a mistake for 76 P R 1903.

† This is a mistake for 55 P L R 1903.

24 P R 1908 (F.B.), Ghulam Ghaus v. Nabi Bakhsh...F...130 P R 1906 ... 620	1 P R 1905, Mussammat Gopal Devi v. Nari Narain and others...F...9 O C 328 ... 328
31 P R 1908, Natha v. Hurmat...Refd. to...39 P L R 1906 ... 885	7 P R 1905, Labhu v. Mussammat Nihali...R... 97 P R 1906 ... 400
41 P R 1908, Rulia v. Rulia...R...90 P R 1906 ... 841	12 P R 1905, Ram Serup v. Mussammat Rakhi...R...69 P R 1906=118 P L R 1906 ... 492
42 P R 1908, Sant Singh v. Jowala Sahai...R... 99 P R 1906=130 P L R 1906 ... 401	21 P R 1905, Hira Nand v. Secretary of State for India...R...90 P R 1905=49 P L R 1906 ... 65
44 P R 1908, Muhammad Nawaz Khan v. Mussammat Bobo Sahib...R...99 P R 1906=130 P L R 1906 ... 401	35 P R 1905, Jawahir v. Radha...R...87 P R 1905=48 P L R 1906 ... 751
48 P R 1908 (F.B.), Mussammat Bano v. Fateh Khan...R...96 P R 1905=52 P L R 1906 ... 889	43 P R 1905, Mussammat Anar Devi v. Mussammat Kaulan...cited & discussed... 15 P R 1906=117 P L R 1906 ... 887
—, Mussammat Bano v. Fateh Khan...Disc... 62 P R 1906=136 P L R 1906 ... 896	48 P R 1905, Gongod v. Sham Gir...D...71 P R 1906 ... 700
54 P R 1908, Muhammad Hussain v. Sultan Ali...Refd. to & Distd...16 P R 1906=66 P L R 1906 ... 887 & 888	52 P R 1905, Ahmad v. Jahana...R...62 P R 1906=136 P L R 1906 ... 896
66 P R 1908=90 P L R 1903, Rahim-ud-din v. Rewal...R...110 P L R 1906 ... 140	57 P R 1905 (F.B.), Labhu Ram v. Kanahi Ram...R...69 P R 1906=118 P L R 1906 ... 492
—, 21 P R 1906 ... 753	58 P R 1905=59 P L R 1905, Ram Bakhs Mal v. Balwant Singh...Refd. to...2 P L R 1906 ... 882
86 P R 1908, Iqhar Singh v. Lehna Singh...R... 62 P R 1906=136 P L R 1906 ... 896	65 P R 1905, Permanand v. Municipal Committee, Lahore...R...128 P R 1906 ... 259
7 P R 1904, Mussammat Jagaji v. Man Mohan...R... 188 P R 1906 ... 9	82 P R 1905, Punjab National Bank v. Salamat Singh...R...128 P R 1906 ... 250
9 P R 1904 (Rev), Gunga Ram v. Mohan...R... 52 P R 1906=102 P L R 1906 ... 727	88 P R 1905, Sharif Hussain v. Muhammad Yasuf...F...81 P R 1906 ... 898
11 P R 1904, Gahna v. Sohan Lal...Refd. to...16 P R 1906=66 P L R 1906 ... 887, 888	97 P R 1905, Khan Singh v. Hakin Singh...D... 191 P R 1906 ... 141
28 P R 1904, Bishen Singh v. Bhagwan Singh...R...102 P R 1906 ... 402	101 P R 1905, Hari Devi v. Charan Das...R... 112 P R 1906 ... 808
49 P R 1904, Nabi Bakhsh v. Ganesh...R...32 P R 1906 ... 144	24 P R 1906*, Ghulam Ghaus v. Nabi Bakhsh...R... 84 P R 1906 ... 981
44 P R 1904, Parma Nand v. Secretary of State for India...R...90 P R 1905=49 P L R 1906 ... 65	55 P R 1906, Bishen v. Lal Singh...F... 142 P R 1906 ... 981
46 P R 1904, Gokal Chand v. Muhammad Munir Khan...F...74 P L R 1906...794	69 P R 1906, Rattan Chand v. Ram Parahad...F... 79 P R 1906 ... 598
67 P R 1904, Mussammat Kirpi v. Solekh Singh...R...63 P R 1906=136 P L R 1906 ... 896	81 P R 1906, Prag Raj v. Murari Lal...R... 120 P R 1906 ... 769
71 P R 1904, Hassan v. Jahana...cited and R... 12 P R 1906=108 P L R 1906 ... 886	—, 122 P R 1906 ... 769
—, Disc...62 P R 1906=136 P L R 1906 ... 896	95 P R 1906, Muhammad Qasim-ud-din Khan v. Lachmi Nath...R...76 P R 1906...27
78 P R 1904, Muhammad Umar v. Kirpal Singh...D...145 P R 1906... 764	109 P R 1906, Raghuvar Das v. Salig Ram...R... 125 P R 1906 ... 801
90 P R 1904, Sahib Dad v. Bahmat...R...121 P R 1906 ... 141	+ 82 P R 20 (Civ), Lakha Singh v. Jhanda...R... U B R (1906) Lichitation 7 ... 624
92 P R 1904, Fuzul Khan v. Samad Khan...F... 75 P R 1906 ... 898	* This is a mistake for 24 P R 1908 (F.B.).
	+ This is a mistake for 52 P R p 20 or 5 P R 1927.

Punjab Law Reporter.

- P L R 1900 (Cr) 85, Turab v. Crown...R...41 P
R 1906= 95 P L R 1906 ... 527¹
P L R (1906) 170=21 P R 1900, Karam Ilahi v.
Babua Mal...R...110 P L R 1906
... .. 140
P L R (1900) 447=84 P R 1900, Ahmad Shah
v. Mussammat Talia Bibi...Refd. to...
29 P L R 1906 385
* 2 P L R 107, Karam Ali v. Narain Singh
...F... 3 C L J 363=10 C W N 788=33
C 812 162
† 2 P L R 615, Nandalal v. Gurditta Mal...R...
10 C W N 551=3 C L J 576=33 C 613
... .. 787
21 P L R 1901, Ram Chand v. Devi Chand...F
...45 P R 1906=120 P L R 1906... 758
58 P L R 1901, Sewa Singh v. Wasawa Singh
...D...117 P R 1906 406
112 P L R 1901=94 P R 1901, Jhangi Ram v.
Mussammat Budho Bai...F...38 P L R
1906 289
143 P L R 1901=92 P R 1901, Mussammat
Karam Bibi v. Husain Bakhsh...R...
59 P L R 1906 394
18 P L R 1903=98 P R 1902, Prabdh Dial v.
Gurmukh...R...11 P L R 1906 ... 782
22 P L R 1903=101 P R 1902, Ghulam Shah v.
Zain Shah ...R... 59 P L R 1906 ...394
90 P L R 1903=66 P R 1903, Rahim-ud-din v.
Rewal...R...110 P L R 1906 ... 140
59 P L R 1905=58 P R 1905, Ram Rakha Mal
v. S. Balwant Singh...Refd. to...2 P L
R 1906 382
175 P L R 1905, Giryra Nand v. Nathu Ram
...D... 71 P R 1906 790

Sutherland's Weekly Reporter.

- 1 W R 290, Horo Kissen v. Joy Kissen...R...3
C L J 143 71
2 W R Mis. 35=B L R Sup Vol. 349, Nobbo
Kissen v. Kamince...R...3 C L J 545=
10 C W N 986=33 C 1323 ... 588
2 W R 125, Issur Chunder v. Ramee Dossee
...R...4 C L J 823 484
3 W R Civ. Bul. 152, Ukoor Doss v. Chunder
Sekhur Doss...R...33 C 507 503
6 W R Mis Bul 4, Onooroop Chunder Mookerjee
v. Pertab Chunder Paul...Appl...3 C
L J 257=10 C W N 564 ... 311 & 312

* This is a mistake for P L R p. 107 Vol. 2 or 35 P
L R 1901.

† This is a mistake for 3 P L R 615.

- 6 W R (Mis) 53, Jusoda Koonwar v. Baboo
Gouree Bainath Pershad...R...188 P
R 1906 9
6 W R 68, Shama Churn v. Roop Doss...R...
4 O L J 328 484
6 W R M R 125, Shaikh Alimodeed Moallem
v. Musammat Syfoora Bibee...R... A
W N (1906) 256* 647
7 W R 30, Nilkant Sein v. Sheikh Jaenooddeen
...F...2 N L R 92 ... 717 & 718
7 W R 103, Naduroonissa Bebee v. Aghur Ali
Chowdhry...F...1 M L T 145=16 M L
J 372=29 M 426 (F.B.)... .. 387¹
7 W R 392, Bykant Monee Kisto Soonderee
...Diss... 4 C L J 357=11 C W N 12=
33 C 1906 472, 473
7 W R 529=B L R Sup. Vol. 728, In the matter
of Brojender Coomar Roy...R...3 C L J
545=10 C W N 936=33 C 1323... 588
8 W R 144, Joynarain Patur v. Russoek Mohun
Banerjee...Diss...3 C L J 67=33 C 927
... .. 300
8 W R 223, Dabco Rawoot v. Hoeramun...F...
3 C L J 399=10 C W N 535 ... 524
9 W R 108, Phoolchand v. Raghoobuns...Refd.
to...3 C L J 260 35
9 W R 402, Hurro Chunder Roy Chowdhry v.
Shoorodhonnee Debia...Appr... A W N
(1906) 171=3 A L J 556=28 A 655
... .. 246, 247
... .. R & F...
3 C L J 67=33 C 927 300
10 W R 6, Drobo Moyce Dabee v. Bipin
Mundal ...R... 126 P R 1906...146, 147
10 W R 369, Ahmed Hossain v. Khodeja ...F...
3 C L J 541 643 & 644
11 W R 191, Collector of Bograh v. Kristo
Indur Roy ...Refd. to & F... 3 C L J
293=33 C 487 267
11 W R 381, Foy Gopal v. Thako Monee...Diss
...2 N L R 121 788
11 W R 412, Surbo Chunder Woomanund
...relled upon...3 C L J 143 ... 71
11 W R 548, Gunga Gobind Mundul v. Banee
Madhub Ghose...R...2 N L R 113...718
* 12 W R (S.F) 283, Byjnath Lall v. Ramoo-
deep Chowdry...R...10 P L R 1906=2
P R 1906 676
12 W R 296, Sooruj Monee Dayee v. Sudanund
Mohapattur...R & F...3 C L J 67=33
C 927 300
12¹ W R 498, Shahazadee Hazara Begum v.
Khaja Hussain Ali Khan...R...2 N L
R 156 655

¹ This is a mistake for 21 W R (S.C) 283.

13 W R 235, Murshurool Huq v. Puhraj Ditarye ...F...8 Bom L R 245 ... 652	19 W R 178, Taruck Chandra Totadar v. Jooqheshteer Chunder Kundoo...F...4 C L J 56 ... 492
13 W R 332, Bhodo Mahmed v. Radha Churn Bolia...R...2 N L R 150 ... 766	19 W R 222, Nowbut Singh v. Chutter Dharee ...R & F...4 C L J 198 ... 174
14 W R 38 (P.C.), Sri Gajapathi Radika v. Sri Gajapathi Nilamani...R...8 Bom L R 770 ... 19	19 W R 264, Jadoonath v. Bassunt Coomar...R 3 C L J 15=10 C W N 510=38 C 815 ... 509
14 W R 42, Koyelash Chunder Sannel v. Asalut Shaikh Gharameo...R... 2 N L R 23 ... 852	19 W R 281, Kali Pershad v. Raye Kishoroe ...R...4 C L J 246 ... 682
15 W R (P.C.) 24, Radha Nath Dass v. Gis- borne & Co...D...3 C L J 306=10 C W N 738=33 C 511 ... 622	20 W R 104, Ram Lochun Chuckerbutty v. Ram Soonder Chuckerbutty...R...21 T L R 67... 414
15 W R 61, Poresb Nath Roy v. Gopalkristo ...R...3 C L J 545=10 C W N 986=33 C 1323 ... 588	20 W R 112, Sreenath Roy v. Bindoo Bashinoe Debia...cited & F...3 P R 1906=109 P L R 1906 ... 185
15 W R 70, Bhyrub Sircar v. Sham Manjee ...Refd to and F...3 C L J 293=31 C 487 ... 267	20 W R 114, Brindaban Chander Roy v. Tara Chand Banerjee...R... 9 O C 230... 157
15 W R 210, Sukh Mayi Dasi v. Lakhi Debia ...R...U B R (1906), Limitation 7 ... 624	20 W R 150, Kedar Nath Dutt v. Sham Lall Khettry...R...10 C W N 276=33 C 410=4 C L J 102 ... 699 & 700
15 W R 263, Khulroo Misra v. Jhoomuck Lall Dass...not F...10 C W N 1074=4 C L J 476 ... 494	20 W R 285, Poma Churn Chowdhury v. Um- bika Churn Dey...relied on...10 C W N 434 ... 559
16 W R 47, Khellat Chunder Ghose v. Nasub- unnissa Bibee...Diss...9 O C 1 ... 587	20 W R 373, Asgur Ali v. Asgur Ali...Refd to & F...3 C L J 298=33 C 487 ... 267
16 W R 56, Bhyrub v. Kales...R...10 C W N 551=3 C L J 576=33 C 618 ... 787	20 W R 458, Muhammad Baksh v. Abdul Karim & others...R...U. B R (1905), Evidence 7 ... 440
16 W R 105, Jadoonath v. Bassunt Coomar ...reviewed...3 C L J 15=10 C W N 510=33 C 815 ... 509	21 W R 27, Krishnendro Roy Chowdhry v. Surno Moyee...R...33 C 15 ... 589
16 W R 178, Nilmoney Singh v. Sharoda Per- shad...Diss...3 C L J 143 ... 71	21 W R 249, Nullit Chunder v. Bugola Soon- duree...R...4 C L J 323 ... 484
16 W R 198, Bejoy Keshub Roy v. Obhoy Churn Ghose...D...4 C L J 367... 163	21 W R 338, Mahomed Amer v. Prankishore Deb...Refd to...A W N (1905) 200= 2 A L J 667=28 A 95 ... 298
16 W R 260, Meer Ashruf Ali v. Meer Ashad Ali...F...3 C L J 49 ... 643	21 W R 349, Raj Krissen Mukerjee v. Radha Madhab Halidar...R... 10 C W N 820 ... 209
16 W R 269 (Civ), Juggut Chunder Bhadooree v. Shib Chunder Bhadooree...R...U B (1905) Civil Pro 36 ... 242	...F... 1 M L T 145=16 M L J 373=29 M 426 (F.B.) ... 887
17 W R 239, Syedan v. Velayet Ali...R...4 C L J 485=11 C W N 71 ... 461, 642	21 W R 428, Ram Baksh Singh y. Mohunt Ram Lall Doss...R...3 L B E 163...709
* 17 W R 591, Juggo Lal Oopadhya v. Jankee Beebee...R & F...3 C L J 67=33 C 927 ... 300	22 W R 22, Nurendra Narain Roy v. Ishan Chander...R...3 C L J 843=33 C 581 ... 91
18 W R 87, Zuhoorun Begum v. Mahomed Wajed...Refd. to & F...3 C L J 293=33 C 487 ... 267	22 W R 77, Rancee Nyna Kaper v. Doobee Chand ...D...34 P R 1906=38 P L R 1906...250
18 W R 375, Chunder Monee v. Kristo Chunder...R...4 C L J 323 ... 484	22 W R 79, Kuller Singh v. Jewan Singh...R... 3 C L J 545=10 C W N 986=33 C 1323 ... 588
19 W R 22, Chhatool v. Ghuunoo Singh...F 2 N L R 121 ... 783	22 W R (P. C.) 90, Dinonath Gangoooby v. Narsing Prasad Doss...R...9 O C 147 (B) ... 619

* This is a mistake for 17 W R 591.

22 W R 121, Ram Soondar v. Surbanee ... <i>Appl</i> & <i>Distd.</i> ... 4 C L J 857 = 11 C W N 12 = 38 C 1806 472 & 478	
22 W R 128, Banee Madhub v. Nund Lall ... <i>Refd to</i> & <i>F</i> ... 8 C L J 298 = 38 C 457 267	
22 W R 127 * Ram Soondur Singh v. Surbanee <i>Dossee</i> ... <i>Appr</i> ...10 C W N 921 (P.C.) = 4 C L J 171 = 16 M L J 276 = 1 M L T 260 = 8 Bom L R 700 = 3 A L J 702 = 29 M 382 470	
22 W R 225, Woodoyaditto v. Mukoond... <i>Appl</i> ...4 C L J 399 659	
22 W R 231, Leelanund Singh v. Lakhputtee Thakoorain... <i>R</i> ...4 C L J 181 = 8 Bom L R 705 = 30 B 523 = 1 M L T 301 (P.C.) 544	
22 W R 348, Futtick Chunder v. Juggut Mohi- nee... <i>R</i> ...4 C L J 323 484	
22 W R 525, Gooroo Doss Dutt v. Ooma Churn Roy... <i>R</i> ...A W N (1905), 167 = 2 A L J 585 = 28 A 25 745, 746	
22 W R 25, Sheo Golam Singh v. Ram Roop Singh ... <i>R</i> ...2 N L R 113 718	
22 W R 96, Bhanoomutty Chowdrain v. Prem- chand Neogy.. <i>R</i> .. 2 N L R 118.. 719	
22 W R 229, Coomar Puresh Naram Roy v. Messrs R Watson and Co ... <i>F</i> ...24 P L R 1906 302	
24 W R 41, Jogesar Banarjee v. Kalyadi Charn Deo .. <i>R</i> ...U B R Specific Belief, 10 861	
24 W R 44, Mussammat Inderbutter Kooer v. Shaikh Mahbub Ali .. <i>Diss</i> ...141 P R 1906 441	
24 W R 86 (note), Radha Mohan v. Ram Das Dey... <i>F</i> ...3 C L J 224 863	
24 W R 124, George R O Sherman v. Edwin Sherman Schorn .. <i>R</i> & <i>Appr</i> ...4 C L J 115 14	
24 W R 395, Mussaramutt Kollany Kuar v. Luchmee Pershad... <i>R</i> .. 3 C L J 502 = 10 C W N 995 (S.B.) = 38 C 957 + ... 221	
24 W R 476, Raj Chunder Chowdhry v. Shaikh Musheer Mahomed... <i>Refd. to</i> ...10 C W N 508 78	
25 W R 72, Kali Prasad v. Digambar Chatterji ... <i>R</i> ...U B R (1906) Limitation 7...624	
25 W R 100, Goluck Chundra Bose v. Ramee Ohilla Dayee... <i>not F</i> ...10 C W N 1074 = 4 C L J 476 494	

*This is a mistake for 22 W R 121.

This is a mistake for 38 C 947

(1864) W R Cap No. (Act X) 46, Barry v. Abdeol Ali ... <i>relied upon</i> ... 8 C L J 148...71	
W R Sp. No. 75 (F.B.), Koomad Chunder Roy v. Seeta Kant Roy... <i>F</i> ...A W N (1900) 13 = 3 A L J 87 = 28 A 377 ... 482	
(1868) W R Sp. No. 75 (F. B.), ... <i>Refd. to</i> ...2 A L J 654 = A W N (1905) 343 = 28 A 187 ... 510	
Special No. of Weekly Reporter 1864, p. 25, Hamidu-nissa v. Anand Moyi ... <i>R</i> ... 1 M L T 333 115	
W R (1864) 103, J J Grey v. Anund Mohun Moitro... <i>R</i> ...38 C 15 ... 580	
W R (1864) 219, Mussammat Ojheoonissa Begam v. Sheikh Rustam Ali... <i>R</i> ...A W N (1906), 177 = 3 A L J 798 = 28 A 691 763	
W R (1864) 351, Issur Chunder Shaha v. Mirra Nisar Houssein... <i>F</i> ...A W N (1905), 167 = 2 A L J 682 = 28 A 24 ... 648	

Nagpur Law Reports.

1 N L R 117, Mangal Prasad v. Chandra Mall ... <i>R</i> ...2 N L R 79 738	
---	--

Central Provinces Law Reports.

3 C P L R 15, Sadasho Tamboli v. Must. Tareeman... <i>R</i> .. 2 N L R 106 ... 445	
3 C P L R 64, Diwaker v. Janardhan... <i>F</i> ...2 N L R 52 490	
3 C P L R 82, Patiram v. Ghasiram... <i>R</i> ...2 N L R 116 707	
3 C P L R 126, Bina v. Biraj... <i>F</i> ... 2 N L R 52 490	
3 C P L R 300, Garden v. Bruce... <i>R</i> ...A W N (1905), 181 = 2 A L J 579 = 28 A 54 604	
6 C P L R 60, Ramprasad v. Deekannar... <i>F</i> ...2 N L R 52 490	
6 C P L R 74, Bhopal Singh v. Thakur Borelaj ... <i>F</i> ...2 N L R 29 726	
6 C P L R 81, Dajiba Patel v. Dinanath... <i>R</i> ...2 N L R 87 191	
6 C P L R 109, Joharuddin v. Kesherao ... <i>R</i> ... 2 N L R 92... .. 717 & 718	
7 C P L R 97, Banai Lal v. Atmatam... <i>R</i> ...2 N L R 110 466	
9 C P L R 142, Raja Seth Gokuldas v. Mt. Jankee ... <i>R</i> ...2 N L R 87 191	
10 C P L R 38, Lachman Ram v. Bhimsen ... <i>F</i> ...2 N L R 66 181	
10 C P L R 65, Narsin v. Ganpat Das... <i>R</i> ...2 N L R 92 717 & 718	
11 C P L R 5, Diwan Maharaj v. Abheram Gumar... <i>F</i> ...2 N L R 722	
14 C P L R 17, Bhagwanadas v. Tarnchand ... <i>F</i> ...2 N L R 106 446	

14 C P L R 42, Pandurang v. Bataji ... 9 N
L R 121 ... 788
16 C P L R 111, Sitaram v. Dharmu ... R...
2 N L R 187 ... 918
Law Reports, Indian Appeals.
1 A 1 p 108, Byjnath Lall v. Ramoojissen Chowd-
ry ... R... 10 P L R 1906=2 P R 1906
... 676
1 I A 187, Rani Mewa Kunwar v. Rani Hulas
Kunwar ... Refd. to... A W N (1906) 84
3 A L J 155=28 A 847 ... 488
2 I A 7, Mahmood Shumsool v. Shewak Ram
... F... 8 Bom L R 652 ... 425
... R...
9 O C 119 (B)... 520 & 521
... R...
8 Bom L R 482 ... 522
2 I A 23, Hursahai Singh v. Syud Lootf Ali
... Appr... 3 C L J 816 ... 156
... Hursahai Singh v. Syud Lootf Ali
Khan... Refd. to ... A W N (1905) 271=
2 A L J 821=28 A 256 ... 100
2 I A 148=15 B L R 208, Ram Tuhai Singh v.
Bissesarwar Lall Sahoo... F... 3 C L J 288
... 882
2 I A 109, Kathamma Natchiar v. Dorasingu... D
3 C L J 221 ... 863
... relied on...
10 C W N 830=4 C L J 811 ... 269
3 I A 280, Girdhari Singh v. Hurdev Narayan
Singh... Appr... 21 T L R 206 ... 821
3 I A 253, Nidhoomoni Debya v. Saroda Per-
shad Mookerjee... D... 3 A L J 415 (P.C.)
=10 C W N 730=8 Bom L R 402=8
C L J 594=1 M L T 171=28 A 488
... 469
3 I A 250, Hurspurshad v. Sheo Dyal... R... 3 L
B R 175 (F.B.) ... 190
3 I A 291, Ramesh Khujooroonissa v. Mussam-
mat Beushun Jehan ... R... 10 C W
706 (P.C.)=3 A L J 405=8 Bom L R
887=28 A 439=9 O C 106=1 M L
T 123=4 C L J 295 ... 646
4 I A 14, Raja Vellanki Venkatakrishna Row v.
Venkata Rama Lakshmi Narasayya
... Refd. to... 16 M L J 22=29 M 161
... 468
5 I A 116, Dorab Ally Khan v. Abdool Assez ... R
3 A L J 819=A W N (1906) 310 ... 264
6 I A 88, Ramnagar Pershad v. Koonji Behari
... F... C L J 370=11 C W N 85
... 840
6 I A 88, Suraj Bansi Kuar v. Sheo Persad
Singh... relied on... 10 C W N 978=83
C 1169 ... 188
Suraj Bansi Kuar v. Sheo Persad Singh ... F... 3
C W N 168 ... 448
6 I A 114=3 B 415, Narayanrao Ramchandra
v. Ramabai... F... 4 C L J 74 ... 495
6 I A 182, Ashutosh Dutt v. Doorga Churn
Chatterjee... D... 3 C L J 224 ... 519
7 I A 68, Lekraj Kuar v. Mahpal Singh... R... 4
C L J 181=8 Bom. L R 705=80 B
528=1 M L T 801 (P.C.) ... 544
7 I A 78, Wise v. Amirunnissa Khatun... R...
U B R (1905), Evidence 7 ... 440
8 I A 14 (22), Rani Anund Koer v. The Court
of Wards ... F... 1 M L T 188=16 M L
J 807 (F.B.)=29 M 893 ... 506
8 I A 89, Sudisht Lal v. Mussummat Sheo-
barat Koer... F... 6 Bom L R 781... 651
8 I A 90, Rajah Nilmoney Singh v. Ram
Bhundooy Roy... R... 58 P R 1906=108
P L R 1906 ... 66
8 I A 128 (P.C.)=8 C 51, Mungul Pershad v.
Girja Kant... D... 3 C L J 240=10 C W
N 209 ... 811
8 I A 229, Padma Coomari v. Court of Wards
... Appl. 4 C L J 857=11 C W N 12=
38 C 1806 ... 472 & 473
9 I A at pp 63 and 63, Hari Dall v. Ganesh
Pershad ... F... 16 M L J 28... 716
9 I A 128=6 M 1, Muttayan Chetty v. Shivagi-
ri Zemindar... F... 1 M L T 287=29 M
484=16 M L J 499 ... 481
9 I A 182=5 A 142, Rai Balkrishna v. Musau-
mat Masuma Bibi ... D... 4 C L J 1
(P.C.)=1 M L T 205=3 A L J 495=90
C 188=8 Bom L R 491=10 C W N
849=16 M L J 292=28 A 570 ... 184
... R and Expl... 4 C L J 1 (P.C.)... 1 M
L T 205=3 A L J 495=90 C 188=8
Bom L R 491=10 C W N 849=16 M L
J 292 ... 842 & 843
9 I A 197, Misir Raghoobar Dial v. Rajah Shao
Baksh Singh... F... 29 M 65 ... 807
10 I A 25, R. Olpherts and E Macnaughten v.
Mahabir Pershad Singh... Appr... 21 T
L R 206 ... 821
10 I A 188, Kali Komul v. Umashunkar
Mitra... F... 3 C L J 502=10 C W N
695=88 C 947 ... 535
10 I A 171=10 C 109, Surendranath Banerjee v.
Chief Justice and Judges of the High
Court of Bengal ... B & F... 3 C L J 67=
28 C 927 ... 800
11 I A 27=5 A 250, Ram Kirpal v. Rup Kuar
... R & F... 3 C L J 67=28 C 927... 800
... E...
3 C L J 240=10 C W N 209 ... 811

TABLE OF CASES, OVER-RULED, FOLLOWED, &c.

11 I A 88=10 C 740, Narotom Das v. Sheo Pargash Singh ...R... 4 C L J 246...682	* 16 I A 223, Pertab Chunder Ghose v. Mohendra Nath Purkait...R...8 Bom. L R 764
11 I A 154, Hal Kishen v. Kishan Lal ...R... 16 M L J 526 ... 206	16 I A 233=17 C 291, Pertab Chunder v. Mahendra Purkait...R...4 C L J 198
11 I A 237, Rajah Amir Hassan Khan v. Sheo Baksh Singh...Refd. to... A W N (1905) 198=2 A L J 711=28 A 84 ... 262	17 I A 65=17 C 875, Hemant Kumari v. Brojendra Kishore...F...4 C L J 198...174
12 I A 12=7 A 502 (Followed in 12 C 389) Ramdin v. Kalka Pershad*, Miller v. Runga Nath Moulick) ...D... 33 C 998 ... 612	17 I A 110=18 C 10, Watson & Co v. Ram Chund Dutt...R and D...33 C 1201...542
12 I A 23 (37), Rajah Run Bahadur Singh v. Mussumut Sachoo Koer...F...29 M 65 ... 807	17 I A 122=18 C 23, Durga Chowdhrair v. Jowahir Singh...R...4 C L J 198...174
12 I A 67= 11 C 386, Rani Bhagoti v. Rani Chandan...R...4 C L J 162= 33 C 881 ... 611	17 I A 184, Strimantu Raja Varlagadda Mallikarjuna v. Srimantu Raja Varlagadda Durga...F...2 C L J 281 (P.C.)=10 C W N 95=15 M L J 312=2 A L J 845 =7 Bom L R 907=1 M L T 12=32 I A 261 ... 479
13 I A 81=13 C 908, Jagadamba Chowdhrair v. Dakhina Mqhan...R...10 C W N 1065 =8 Bom L R 722=66 M L J 440=3 A L J 695=4 C L J 406=1 M L T 265=9 O C 377=28 A 727 (P.C.) ... 185	16 M L J 178=29 M 437 ... 472
14 I A 67, Thayammal v. Venkatrama...Appl... 4 C L J 357=11 C W N 12=33 C 1306 ... 472 & 473	17 I A 194, Madho Parshad v. Mehrban Singh ...D...11 C W N 163... 448
14 I A 89, Waghela Rajsanji v. Shekh Masludin ...R...2 N L R 25 ... 708	18 I A 55=18 A 300, Raja Har Narain Singh v. Choudhrai Bhagwant, Kuar...R... 33 C 498 ... 287
14 I A 101=14 C 940 *, Anangamanjari v. Tri-pura Soondari...R...4 C L J 198...174	18 I A 73=18 C 414, Muhammad Nawaz Khan v. Alam Khan...R...4 C L J 162=33 C 881 ... 611
14 I A 168=14 C 801, Mylapore v. Yeo Kay...F...10 C W N 551=3 C L J 576=33 C 613 ... 592	19 I A 1=19 C 249, Ramratan v. Nandu...R... 4 C L J 198 ... 174
15 I A 171, Arunachellam Chetti v. Arunachellam Chettiar...R...A W N (1906) 8=3 A L J 140=28 A 273 ... 245	19 I A 48=19 C 253, Lachmeswar Singh v. Manowar Hossein R. & D...33 C 1201 ... 542
16 I A 156=13 B 520, Nairvahoo v. Turner... Refd. to...9 C W N 952=33 C 560 ... 592	19 I A 101, Biseswar Mookerji v. Ardha Chunder Roy...D...3 A L J 415 ... (P.C.)=10 C W N 730=8 Bom. L R 402=3 C L J 594=1 M L T 17=28 A 488 ... 469
16 I A 166, Tara Charan v. Suresh Chunder ...Appl...4 C L J 357=11 C W N 12=33 C 1306 ... 472, 473	19 I A 203=20 C 296, Sarat Chunder v. Gopal Chunder...R & F...4 C L J 198 ... 6
16 I A 175, Newab Sultan Mariam Begam v. Nawab Sahib Mirza...R and D...9 C W N 827=2 C L J 57=8 O C 270=27 A 383 (P.C.)=15 M L J 327=7 Bom L R 850=3 A L J 64=32 I A 135... 928	10 C W N 813 ... 358
16 I A 186=12 A 51, Sundar v. Parbati...R... 13 C 1079 ... 516	19 I A 208=20 C 296, ...R... 4 C L J 323 ... 426
16 I A 195, Munganiram Marwasaj v. Mohunt Gursahai Nund...R...8 Bom. L R 897 ... 29	19 I A 221, Nurul Hussain v. Sheo Sahai...F... 4 C L J 370 ... 738
	20 I A 99, Ismail, Arif v. Mahomed Ghous...R... 21 T L R 67 ... 414
	21 I A 35=20 C 373, Greender Chunder v. Troylookuonath...R...4 C L J 323 ... 457
	21 I A 39=21 C 504, Lukhi Narain v. Jadu Nath...R...4 C L J 198 ... 174
	21 I A 163 at 166=21 C 997, Umrao Begam v. Irsad Hussain...F...3 C L J 86 (P.C.)=

* This is a mistake for 14 C 740.

This is a mistake for 16 I A 233.

TABLE OF CASES, OVER-RULED, FOLLOWED, &c.

* cr

10 C W N 230=1 M L T 6=16 M L J 77=28 A 215 ... 744	28 I A 111=28 A 883, Jafir Begum v. Syed Ali Reza...R...4 C L J 162=33 C 881 ... 611
22 I A 94=22 C 843, Mohunt Bhagaban v. Boghunundun...relied on...4 C L J 323 ... 494	29 I A 9, Dinobundhu Shaw Chowdhry v. Jagmaya Dasi...R and F...29 M 37...918
23 I A 18, Norendra Nath Sircar v. Kamalbasi- ni Dasi...Appl...4 C L J 857 ... 20	29 I A 51=29 C 107, Ghulam Khan v. Muham- mad Hassan... R... 33 C 498.....287
24 I A 60=24 C 863, Debi Pershad v. Joynath ...Appl...4 C L J 370=11 C W N 85 ... 840	...F...33 C 899 288
24 I A 76=24 C 834, Lalit Mohun Singh Roy v. Chukkan Lal Roy...F...3 C L J 502= 10 C W N 695 (S. B.)=33 C 947*...21	29 I A 51=26 C W N 226=20 C 167, Gulam v. Muhammad Ahmed...considered... 10 C W N 609 (F. B.)=3 C L J 450= 33 C 756 ... 291
24 I A 187=2 C W N 1, Syad Muhammad Yusuf-ud-din v. The Queen-Empress ...R...10 C W N 361=8 Bom L R 129 (P. C.)=8 A L J 250=33 C 219=3 C L J 395=16 M L J 115=1 M L T 115...857	...F...U B R (1905), Civ. Pro. 40...293
24 I A 177=25 C 194=1 C W N 698 (P. C.), Manmatha Nath Mitter v. Secretary of State for India in Council...D...10 C W N 1044=4 C L J 843=33 C 1290 ... 195	29 I A 118 (126), Sri Gopal v. Pirthi Singh ...Refd. to...7 Bom L R 811=30 B 156 ... 221
25 I A 85=25 C 844, Sukha Moni v. Ishan Chandra...R...10 C W N 551=3 C L J 576=33 C 613 ... 592	30 I A 165 (P. C.)=25 A 407, Gharib-ul-lah v. Khalak Singh...F...3 C L J 12...487
25 I A 54, Rao Balwant Singh v. Rani Kishori ...R...16 M L J 491... 523	30 I A 182, Mussummat Bibi Walian v. Banka Behari Pershad Singh...Refd. to...29 M 58=16 M L J 14 ... 282
† 25 I A 118, Sri Gopal v. Pirthi Singh...R...7 Bom L R 811=30 B 156 ... 713	30 I A 220, Annamali Chetty v. Murugasa Chetty...R...A W N (1906), 261=3 A L J 785 ... 500
25 I A 161=26 C 81 (100), Mahammad Imam Ali Khan v. Husain Khan...R...4 C L J 323 ... 457	31 I A 1=27 M 181, Abdul Aziz Khan v. Appa- sami Naicker...R...1 M L T 287=29 M 484=16 M L J 499 ... 481
26 I A 58=21 A 496, Lala Beni Ram v. Kundun Lal...R...10 C W N 765=33 C 1119 ... 474	† 31 I A 144=8 C W N 889, Upendra Krishna v. Ismail Khan...F...10 C W N 503 ... 73
26 I A 153, Bhagwan Singh v. Bhagwan Singh ...R...3 A L J 415 (P. C.)=10 C W N 730=8 Bom L R 402=3 C L J 594=1 M L T 171=28 A 488 ... 469	32 I A 23=7 Bom L R 1=9 C W N 201=2 A L J 71 (P. C), Khiaarajmal v. Daim... Appl...2 A L J 615=A W N (1905) 229 =28 A 187 ... 464
27 I A 58=2 Bom L R 523=22 A 149, Bal Ki- shen Das v. W F Legge...Refd. to...7 Bom L R 609=30 B 119 ... 434	32 I A 102=9 C W N 601, Shaikh Kumarud- din v. Jawahir Lal...relied on...11 C W N 163... 448
27 I A 69, Gnanasambanda Pandara Sannadhi v. Velu Pandaram...R...33 C 507 ... 503	32 I A 229, Chaudhri Ahmad Bakhsh v. Seth Raghubar Dayal...R...9 O C 389...821
§ 27 I A 153, Fatimatilnissa Begum v. Soonder Das...R...A W N (1906) 28=3 A L J 113=28 A 383 ... 585	I A Sup. Vol. 47, Tagore v. Tagore...Appl...4 C L J 357 ... 20
	I A Sup. Vol. 181=13 B L R 124, Raja Leela- nund Singh v. Thakoor Muncorunjun Singh...F...3 C L J 1=10 C W N 161=3 A L J 55=8 Bom L R 1=16 M L J 1=1 M L T 3 (P. C.)=29 M 52 ... 847

Moore's Indian Appeals.

* This is wrongly printed as 33 C 957 in Col. 21.

† This is a mistake for 25 I A 95.

‡ This is a mistake for 23 I A 113.

§ This is a mistake for 27 I A 108.

1 M I A 305, Freeman v. Fairlie...R...1 M L T
278=29 M 461 ... 411

‡ This is a mistake for 8 C W N 880.

*2 M I A 68, Naraguntty Luchmeedavamah v. Vengama Naidoo...F...2 C L J 281 (P. C.)=10 C W N 95=15 M L J 812 =2 A L J 845=7 Bom L R 907=1 M L T 12=83 J A 261 ... 478	*9 M I A 548, Katama Natchiar v. The Raja of Shivagunga...F...A W N (1906) 270 =2 A L J 848=28 A 241... 504
2 M I A 182, Butcheputty Datt v. Rajunder Narain...R...9 O C 289 ... 484	10 M I A 196, Jarivtool Butool v. Hoseine Begum...R & F...3 C L J 67=38 C 927 ... 800
2 M I A 853 (889), Cockrell v. Dickens...R...29 M 491 ... 689	10 M I A 208, Shama Purahad Roy Chowdery v. Hurro Purahad Roy Chowdery...R... A W N (1906) 171=8 A L J 556=28 A 655 ... 246 & 247
3 M I A 229, Dhurm Dass Pandey v. Musammamat Shama Soondri D...R...9 O C 399 ... 821	10 M I A 279, Bhooanmoyee v. Ram Kishore ...Appl...4 C L J 357=11 C W N 12=38 C 1806 ... 472 & 478
3 M I A 422 (P.C.), Framjee Cowasjee v. Thompson and Kebbel...R...2 N L R 179...722	11 M I A 7, Eshen Chunder Singh v. Shama Churn Bhutto...R...8 Bom L R 764 ... 686
5 M I A 82, Anand Ali v. Maharaja Dhiraj Gurrood...Appl...4 C L J 399... 659	11 M I A 189 (175), Mussumet Thakoor Deyhee v. Rai Baluk Ram...R...16 M L J 550 ... III
6 M I A 134 (156), Nussirwanjee v. Meer My-noodeen...Refd. to...3 C L J 293=38 C 487 ... 545	11 M I A 286, Thakoorain v. Mohun...cited & F...20 P R 1906=69 P L R 1906 ... 482
6 M I A 393, Hunooman Persaud Pandey v. Musummat Babooee Munraj Koon-waree...Appl...38 C 842 ... 515	11 M I A 468, Mohammad Zahur Ali Khan v. Mussumat Thakooranee Rutta Koer ...D...4 C L J 1 (P.C.)=1 M L T 205=8 A L J 495=9 O C 188=8 Bom L R 491=10 C W N 649=16 M L J 292=28 A 570 ... 481
-----R...9 C W N 636=1 M L T 408=38 C 257† ... 607	-----R & Exp... 4 C L J 1 (P. C.)=1 M L T 205=8 A L J 495=9 O C 188=8 Bom L R 491=10 C W N 649=16 M L J 292...342, 348
6 M I A 526, Soorjeemoney Dassee v. Deno-bundoo Mullick...F...3 C L J 224...384	11 M I A 605, Moonahsee Buzloor Ruheem v. Shumsconniisa Begam and Jodonath Bose v. Shumsconniisa Begum ...F... 21 T L R 159 ... 319
7 M I A 261, Musammnat Ameena Khatoon v. Radha Benod Misser...Appl...3 C L J 257=10 C W N 564 ... 811, 812	12 M I A 88, Baboo Beer Partab Sahee v. Maharajah Rajender Partab Sahe...R... 16 M L J 178=29 M 487... 479
8 M I A 170, Fischer v. Kamala Naicker ...Refd. to...2 N L R 17 ... 8	12 M I A 112, Pestonjee Nussurwanjee v. Manokjee & Co...F... 8 A L J 635=A W N (1906) 258 ... 177
8 M I A 555, The Collector of Muslipatam v. Cavalry Vencata Narsinapah...R...9 C W N 636=1 C L J 408=38 C 527 ... 607	12 Moo I A 397 at p. 448, Collector of Madura v. Mootoo Ramalinga Sathupathy ...R... 10 C W N 921 (P.C.)=4 C L J 171=16 M L J 273=1 M L T 260=8 Bom L R 700=8 A L J 702=29 M 392 ... 470
9 M I A 184, Sreemuthy Soorjee Money Dossee v. Denobundoo Mullick...R...1 M L T 227 ... 41	13 Moore's I A 1, Res Manick Chaud v. Madho Ram...R...9 O C 129 (P.) ... 428
9 M I A 193, Abraham v. Abraham...R...8 Bom L R 770 ... 19 & 362	13 M I A 140, Rajah Suraneni v. Suraneni...R... 16 M L J 380=1 M L T 272=28 M 453 ... 480
9 M I A 324, 327 (P. C.), Raja Mohesh Narayan Singh v. Krishnanund Missir...R...38 C 666 ... 446 & 447	
9 M I A 539 (404), Katama Natchiar v. Raja of Shivagunga...relied on... 10 C W N 955=38 C 1001 ... 38	
-----R...16 M L J 389=1 M L T 272=29 M 458 ... 480	
-----R...9 O C 830 ... 82	

*This is a mistake for 9 M I A 68.

† This is wrongly printed as 38 C 527 in Col. 607.

‡ This is a mistake for 38 C 257.

*This is a mistake for 9 M I A 439 (548).

13 M I A 404, <i>Nawab Asimut v. Jowahir...</i>	908
4 C L J 817 ...	
13 M I A 497, <i>Lopes v. Muddan Mohun Thakoor</i>	5
...D...1 M L T 101 ...	
...Refd to ..A W N (1905) 371=2 A L J 821=28 A 256 ...	160
...R...	
3 A L J 453=28 A 647 ...	160
...rulled on...	
10 C W N 540=4 C L J 51 ...	588
...Lopes v. Muddan Mohun Thakoor	
...R...3 C L J 816 ...	799
13 M I A 497 (512), <i>Gajapathi Radhika v. Gajapathi Nilaman...</i>	323
...4 C L J ...	457
14 M I A 1, <i>Radanathi Doss v. Gisborne...</i>	90
C 378 ...	619
14 M I A 19, <i>Radanath Doss v. Gisborne...</i>	
16 M L J 839=1 M L T 290=29 M 501 ...	710 & 711
14 M I A 24 (36), <i>Mantappa v. Baswant Rao</i>	
R...4 C L J 323 ...	457
14 M I A 71*, <i>Rain Lakshmi v. Sivanatha...</i>	
3 A L J 717=A W N (1906),	289
... ..	485
14 M I A 152, <i>Hurryhur Mookhopadhya v. Midub Chunder Baboo</i>	
...D...4 C L J '548 ...	191
14 M I A 302, <i>Skinner v. Oordes...</i>	1 M L T 347 ...
... ..	671
14 M I A 377, <i>Bebee Bachun v. Sheikh Hamid Hossain...</i>	3 C L J 541 . 648 & 644
14 M I A 496, <i>Mussumat Buhuns Kowar v. Lalla Buhoree Lall</i>	1 M L T 284 =29 M 478 ...
... ..	108
...R ..	
8 Boga L R 878 ...	265
14 M I A 570, <i>Rama Lakshmi Anmal v. Sivanatha Perumal Sethurayar...</i>	3 L B R 175 (F.B.) ...
... ..	190
...R...	
3 A L J 717=A W N (1906) 289...	485

Burma Law Reports.

10 Bur L R 269, <i>Ma Sin v. Tarakinka Sen...</i>	8 L B R 228 ...	664
11 Bur L R 281, <i>Maung Bin v. Ma Hlaing and 7 others...</i>	3 L B R 227 ..	490

Lower Burma Rulings.

1 L B R 7, <i>Tha Ohiv, Mi E Mya...</i>	U B R (1905) Buddhist Law Divorce 8...	189
1 L B R 186, <i>Maung Mo Gale v. Ma Sa U</i>	3 L B R 190.	706 & 709

2 L B R 56, <i>Ya Gyaw v. Mi Ngwe...</i>	U B R (1905) Evidence 8 ...	482
2 L B R 85, <i>Ma That v. Ma San On...</i>	overruled	
...3 L B R 175 (F.B.) ...		190
2 L B R 111, <i>Subramani Pilla Chetti v. Po Lu,</i>	...R...U B R (1906) Tort 5 ...	603
2 L B R 208, <i>Mac Intyre v. The Secretary of State for India in Council...</i>	F... 8 L B R 117 ...	60
*12 L B R 223, <i>Tun Myaing v. Ba Tun...</i>	U B R (1905), Buddhist Law Inheritance 11 ...	189
(1898—1900) L B R 515, <i>Uppinya v. Maung Tun...</i>	3 C L J 545=10 C W N 986=33 C 1823 ..	588

Upper Burma Rulings.

2 U B R (1892—96) 58, <i>Po Maung v. L H R L P Nagalingam Chetty...</i>	3 L B R 175 (F.B.) ...	100
2 U B R (1892—96) 56, <i>Ma Thin v. Maung Kyaw Ya.</i>	3 L B R 175 (F. B.)...	190
2 U B R (1892-96) 194, <i>Ma Gywe v. Ma Thi Da</i>	3 L B R 175 (F. B) ...	190
U B R (1892-96) 264, <i>Nga Kado v. Queen-Em-</i>	press ...R ..U B R (1900) Tort 5...	668
U B R (1892-96) 327, <i>Thazin v. Mi In...</i>	U B R Land and Revenue Regulation 1 ...	980
U B R (1892-1893), 379, <i>Mi*Zet v. Kyi Nyo...</i>	U B R (1905), Evidence 3 ..	482
2 U B R (1892-96) 581, <i>Ma Min Tha v. Ma Ngaw</i>	3 L B R 169 ..	709
U B R (1892-96), 588, <i>Maung Ko v. Maung Kye</i>	F...3 L B R 169 ...	709
U B R (1897-1901) 14, <i>Mi Mi Tu and another v Nga Naing and others...</i>	partly overruled ..U B R (1905), Civ Pro 40...	293
U B R (1897-01) 26, <i>Mi Gyan v. Su Wa...</i>	F... U B R (1905) Buddhist Law Divorce 8 ...	188
U B R (1897-01) 54, <i>Mi Pwe v. Myat Tha...</i>	U B R (1905), Buddhist Law Inheritance 11 ...	189
U B R (1897-01) 66, <i>Mi Gun Bon v. Po Kywe and another...</i>	U B R (1905) Buddhist Law-Inheritance 11 ...	189
U B R (1897-01) 207, <i>Tha Aung v. San Ka...</i>	U B R Land and Revenue Regulation 1 ...	980
U B R (1897-1901) 209, <i>Nga Nut v. Mi Mi</i>	3 L B R Land and Rev. Regulation 1	571, 980

* This is a mistake for 14 M I A 570.

* This is a mistake for 3 L B R 223.

U B R (1897-01) 209, Nga Nut v. Mi Mi...R...	15 T L R 182...F...21 T L R 52	.. 202
U B R (1905) Land and Revenue Regulation 1 571, 980	16 T L R 85 (86)...F...21 T L R 179	.. 668
U B R (1897-1901) 211, Nga Ke v. Po Ni...R	16 T L R 101...R...21 T L R 183	.. 667
...U B R Land & Rev. Regulation 1	18 T L R 14...F...21 T L R 138	.. 549
... .. 980	18 T L R 119 ...R...21 T L R 191	.. 822
U B R (1897-01), 257*, Tha Aung v. San Ke...R	18 T L R 190...F...21 T L R 24	.. 667
...U B R (1905), Land and Revenue Regulation 1	19 T L R 73 ...F...21 T L R 24	.. 667
... .. 571	19 T L R 185...R...21 T L R 256	.. 196
U B R (1897-1901) 421, Min Din v. On Gaing...R	19 T L R 255 (F.B.) ...F...21 T L R 56	.. 518
...U B R (1905), Evidence 7		
... .. 440		
U B R (97-01) 443, Mi Lok v. Sanyatha...R		
U B R Land and Revenue Regulation 1		
... .. 980		
U B R (1897-01), 484, Mi Aw v. San Thoin...R		
...U B R (1906) Tort 5		
... .. 668		
U B R (1902-1908) 6, Naga Pye v. Mi Me...R		
...U B R (1905) Buddhist Law Divorce 3		
... .. 188		
U B R (1902-1908) 12, Tha So v. Ma Min Gaung		
...R...U B R (1905) Buddhist Law Divorce 3		
... .. 188		
U B R (1904-1905), Civ Pro p 26, Nga Shwe Thin v. Nga Nyan...R...U B R (1906)		
Civ Pro Code 42		
... .. 291		
U B R (1906) Limitation 7		
... .. 624		

Travancore Law Reports.

1 T L R 76...R...21 T L R 196	.. 584
2 T L R 33...F...21 T L R 24	.. 667
4 T L R 34...R...21 T L R 174	.. 684
4 T L R 63...F...21 T L R 179	.. 668
5 T L R 29 ...R... 21 T L R 239	.. 666
6 T L R 13 ...F...21 T L R 236	.. 665
6 T L R 28 ...R...21 T L R 223	.. 641
7 T L R 127 ...F...21 T L R 236	.. 665
...R... 21 T L R 239	.. 666
8 T L R 125...R...21 T L R 289	.. 666
9 T L R 129 ...Expl...21 T L R 127	.. 823
10 T L R 70...F... 21 T L R 67	.. 414
11 T L R 27 ...R...21 T L R 206	.. 321
11 T L R 112...F... 21 T L R 127	.. 823
12 T L R 87...R...21 T L R 174	.. 684
12 T L R 99...R...21 T L R 174	.. 684
12 T L R 133...F...21 T L R 159	.. 667
13 T L R 9...Appr...21 T L R 157	.. 321
13 T L R 155...F...21 T L R 236	.. 665
14 T L R 49...R...21 T L R 159	.. 667
14 T L R 140...R...21 T L R 67	.. 414
14 T L R 221 ...R...21 T L R 256	.. 196
15 T L R 42...F...21 T L R 159	.. 667
15 T L R 127...D...21 T L R 223	.. 641
15 T L R 180...R...21 T L R 239	.. 668

* This is a mistake for U B R (1897-01), 207.

Miscellaneous Indian Cases.

A C 193 (P.C) 1893, Mohideen Hadjar v. Pitchay...R...38 C 1286...	.. 178
L R 1 A C 322, Damodhar Gordhan v. Deoram Kauji...explained...10 C W N 361=8	
Bom L R 129 (P.C.)=8 A L J 250=33	
C 219=8 C L J 395=16 M L J 115=1	
M L T 115	.. 857
Appeal from O D No. 110 of 1900, 10th June, 1902, Sakina Khanum v. Luddun...	
Dis...10 C W N 449	.. 651
* 4 App 102 and 399, Brij Mohan Singh v. The Collector of Allahabad...D...A W N	
(1906) 107=8 A L J 341=28 A 600...121	
Bom. P J (1877), 169, Mahadu v. Bagirathibai	
...R...9 O C 144	.. 535
(1889) P J 187, Bai Rukhmini v. Maneelal Bapubhai...F...8 Bom L R 921...	.. 332
(1893) P J 30, Lomba Gomaji v. Vishwanath Amrit...F...8 Bom L R 652	.. 425
(1834) P J 39, Ranu v. Kedu...F...8 Bom L R 652	.. 495
Civil Appeal No. 185 of 1873, Maharaja Drig Bijai Singh v. Maharaja of Kapurthala	
.. R...9 O C 129 (B)... .. 138	
C A 359 of 1901...Refd. to...18 P L R 1906	
... .. 383	
C R P No. 578 of 1895, Ganapathi Naicken v. Saminatha Pillai...overruled...1 M L	
T 397 † (F.B.) 37 & 38	
Civil Rule No. 3098 of 1905...R & F...3 C L J	
67=38 C 927	.. 300
F A 63 of 1908, unreported, Zahir Singh v. Biri Singh...F...3 A L J 439=A W N	
(1906), 150=28 A 593	.. 697
F A F O No. 70 of 1904, May 22, 1905, Niaz Ali Khan v. Govind Ram...Dist...A	
W N (1906), 316	.. 129
F C A No. 40 of 1897, Jagmohan Singh v. Ritraj Kuar ...R... 9 O C 129 (B)...138	
F C A No. 38 of 1905, Sher Bahadur v. Ganga Baksh ...R...9 O C 246	.. 647

* This is a mistake for 4 A pp. 102 and 399.

† This is a mistake 1 M L T 377 (F.B.)

Jwala Prasad's Oudh Rulings App. p. IV, Shere Bahadur Singh v. Raja Sarabjit Singh
 * ...R...9 O C 129 (B) ... 188
 (1905) Mis. App. No. 7 of 1905, Colleenridge v. Pheku Sahai ...F... 8 C L J 181=88 C 676 ... 289 & 240
 * Petition No. 443 of 1905, In the matter of Nursey* Kessowji ...Expld... 8 Bom. L R 85=1 M L T 50 ... 591
 R A R No. 73...F... 9 O C 68 A (B) ... 139
 Rafique and Jacksons Privy Council Rulings No. 66, Thakur Raghubir Singh v. Raja Narendar Bahadur...R...9 O C 120 (B) ... 188
 Rent appeal No. 91 of 1900, Santokhi y. Bhaya Kishon Dat Singh...R...9 O C 243 (B) ... 210
 S A 789 of 1889, Kukharuddin Khan v. Bhogi Tewari...F...A W N (1906) 226=8 A L J 768=28 A 768 ... 125
 Second Appeal No. 182 of 1891, Madras (Unreported)...Appr...1 M L T 337 (F.B.)† ... 37 & 38
 S A 123 of 1898 decided on 14th June, 1900, Roshan Lal v. Mohammad Fazal Hussain...F...3 A L J 655=A W N (1906), 277 ... 558
 S A No. 959 of 1901 (unreported but noted in 29 M 500), Sankaralingam Chettiar v. Stephen Augustus Ralli...F...29 M 497 ... 531
 Special Appeal No. 1792 of 1902 decided by Rampini and Caspersz, JJ on the 5th May, 1905, Mohabir Rai v. Isri Misar ...R...3 C L J 220 ... 900
 S A 641 of 1903 decided by Banerji, J, on the 6th August, 1904, Banke Rai v. Raghubir...Appr...3 A L J 647=A W N (1905) 248=28 A 182 ... 489
 S C No. 27, Bakar Hussain v. Gulam Bhawani Pal...R...9 O C 129 (B) ... 138
 S C No. 290, Rani Braj Nath Kunwar v. Sardar Jagot Singh...R...9 O C 129 (B)... 138
 S C A No. 247 of 1904, Fatima Begam v. Mohammad Yamin...R...9 O C 169 (B) ... 752
 S C A No. 180 of 1905, Thakur Mohar Singh v. Mt. Ram Kali...R...9 O C 153 ... 372
 S S D A 332, Gournath Chowdhree v. Arno-poorna Chowdrain...adversely commented on and not F...10 C W N 921 (P.G.)=4 C L J 171=16 M L J 276=1

M L T 260=8 Bom. L R 700=8 A L J 702=29 M 382 ... 470
 S D B R No 2 of 1892, Badri Prasad v. Bhimson ...R...9 O C 109 ... 562
 S D B R No 7 of 1893, Makund Pershad v. Debi...R...9 O C 109... 562
 Select Case No. 267...F...9 O C 96 (B) ... 708
 7 Sel. Rep. 273, Taramunnee Dassee v. Mutte Bune Anee...F...10 C W N 1085 ... 483
 7 Select Reports 273, Taramunnee Dassee v. Motee Buveani...not F...3 A L J 587=A W N (1906) 243 ... 512
 11 Select Reports p 12, Ganga Datt v. Sree Narain...R...9 O C 239 .. 484

English Cases.

A C 354, Perera v. Perera...R...3 A L J 519=A W N (1906), 210=28 A 715 ... 657
 (1899) A C 83 at p. 85, North Cheshire Brewery Co. v. Manchester Brewery Co...F...4 C L J 268=10 C W N 107 .. 877
 (1904), A C 301, Mc. Cartney v. Londonderry...F...4 C L J 370=11 C W N 85 ... 840
 2 A A C 99, Wilson v. Waddell...F . 1 M L T 333 ... 115
 L R 7 A C 127, Chasteauneuf v. Capeyron...F ...1 M L T 407=29 M 526 ... 668, 660
 (1882) L R 7 App Cas 219, Johnston v. Orr Ewing...R...4 C L J 263=10 C W N 107 ... 877
 L R 8 A C 517, Young and Co. v. The Mayor and Corporation of Royal Leamington Spa...F...29 M 360 ... 115
 L R 11 A C 247, Abrath v. North Eastern Railway Company...R...16 M L J 18... 661
 L R 11 App Cas (1886) 247, Abrath v. North-Eastern Railway Company...R...86 P R 1906 ... 668
 6 Am Dec 502, Walsh v. Gilmer...R and F...4 C L J 162=33 C 881 ... 611
 10 Am Dec 140, Curley v. Dean...R and F...4 C L J 162=33 C 881 ... 611
 27 Am Dec 271, Watson v. Trask...F...4 C L J 390 ... 418
 30 Am Dec 174, Scott v. Dunn...Refd. to...8 C L J 260 ... 85
 31 Am Dec 452, Walkar v. Quigg...Refd. to...3 C L J 260 ... 35
 24 Am St Rep 250, Warder v. Willyard...R...3 C L J 363=10 C W N 783=33 C 812 ... 162
 33 Am Rep 408, Fosher v. Scripps...F...4 C L J 390 ... 418
 33 Am St Rep 936, Wilcox v. Moon...D...4 C L J 390 ... 418

* This is a mistake for 8 B 270.

† This is a mistake for 1 M L T 377 (F.B.)

47 Am St Rep 999, Gattysburg v. Chisolm...R ...3 C L J 868=10 C W N 788=88 C 812 162	(1867) L R 2 Ch App 224, Williams v. Williams ...R...4 C L J 222 457
55 Am St. Rep. 224, Luick v. Dria Cell...F...4 C L J 890 418	L R 8 Ch App 942, 949, Llanelly v. L and N W Ry...R...11 C W N 147=4 C L J 537 155
15 Am Rep. 549, Harris v. Social M Co...R and F...4 C L J 162=88 C 881 ... 611	(1849) 5 C B 583, Lindus v. Bradwell...R...1 M L T 287* (F.B.)... .. 37 & 38
12 Am St. Rep. 76, Sealer v. Montgomery ...D...4 C L J 390 418	18 C B 836, Wenman v. Ash...Appl...4 C L J 390 418
12 Am St. Rep. 754; 4 L R A 196, Wilson v. Hayes...R...3 C L J 369=10 C W N 788=88 C 812 162	L R 1 C P 578, Arnold v. The Cheque Bank ...R...3 A L J 263=A W N (1906) 77= 28 A 428 88
15 Am St. Rep. 376 Sweet v. Morrison...R and F...4 C L J 162=88 C 881 ... 611	L R 10 C P 816, Carr v. London and North Western Railway Company...Refd. to ...10 C W N 313 368
3 App Cas 1218 (1277), Erlanger v. N S P Co. ...F...3 C L J 260 35	LR 4 C PD 438, Foster v. Wright ...Expl...10 C W N 540=4 C L J 51 538
L R 7 App Cas 285, Pugh v. Heath ...relled on... 10 C W N 904=88 C 1015.. 581	(1895) 1 Ch 37, <i>In re</i> , South American and Mexican Company...Refd. to...7 Bom L R 659= 80 B 101 25
7 App Cas 811, Melbourne Banking Corporation v. Brougham ...F... 8 Bom L R 652 190	1 Ch. 451, <i>In re</i> Howgate and Osborn's Contract ...D...3 C L J 363=10 C W N 788=88 C 812 102
7 App Cas 845 (369), Scarf v. Jardine...Refd. to ...3 C L J 260 35	L R (1905) 1 Ch 618, Ellis v. Ellis ...R... 10 C W N 662=88 C 657 217
12 App Cas 727 at p 733, Learoyd v. Whiteley ...R...8 Bom L R 888=80 B 591... 462	(1905) 1 Ch 618, Ellis v. Ellis...R...3 C L J 422 (S. B.)= 10 C W N 678=88 C 713 23
(1799) 1 Atk 2; 1 W and T L C 7th Ed 228, Stapilton v. Stapilton...R...4 C L J 328 457	+2 Ch. 41, White v. White...F... A W N (1906) 59=8 A L J 124=28 A 884 ... 16
8 Atk 646, Le Neve v. Le Neve...R...A W N (1906), 17=8 A L J 100=28 A 315 785, 786	L R 2 Ch 158, Butt v. Imperial Gas Company ...R...3 A L J 687=A W N (1906) 257 420
* 84 Beav 411, Ingle v. Partridge...R...8 Bom L R 883=30 B 591 462	2 Ch. Ca. 244, Anonymous...R...3 C L J 205= 33 C 425 677
1 Bar 373, Harris v. Huntbach...R...3 C L J 422 (S. B.)=10 C W N 678=88 C 713... 944	2 Ch 775, <i>In re</i> Grainger, Dawson v. Higgins ...F...29 M 290 384 & 385
3 B and Ad 660, Alderson v. Langdale...R...3 C L J 363= 10 C W N 788= 88 C 812 162	LR 9 Ch 635, Miles' Claim...R...1 M L T 287* (F.B.) 37 & 38
(1822) 5 B and Ald 744, Woolley v. Clark...R... 3 C L J 422 (S. B.)=10 C W N 678=88 C 713 23	1 Ch. Div. 440 on appeal 2 Ch. Div. 86, Dalton v. Fitzgerald...D...10 C W N 747=8 C L J 629=88 C 915 442
(1818) 2 Ba & Be 274, Goodman v. Grierson...R ...4 C L J 240 682	8 Ch D 260, Barker's claim...R and Appl...20 M 205 883
10 B and C 128, Dickenson v. Vapy...Refd to... 10 C W N 313 368	L R 8 CH D 61...R...21 T L R 41 ... 692
12 B D 108 (107), In Bell & Co. v. Antwerp, London and Brazil Line...R...80 B 167	4 Ch D 418, Clowes v. Hilliard...D...3 C L J 224 863
10 B and S 606, Commings v. Heard...R and F ...4 C L J 162=88 C 881 ...611	6 Ch Div (40 and 41 Vic) 70, Pandara v. Lush- ington...R...10 C W N 205 ... 4
... .. 575 & 576	
2 Barbour N Y 559, Horie v. Fisher...F...4 C L J 510 612	
L R 3 Ch App 375, Steele v. Midland Railway Company...R...9 C C 811 (B) ... 57	

* This is a mistake for 84 Beav 412.

* This is a mistake for 1 M L T 377 (F.B.)

+ This is a mistake for L R 1896 2 Ch D 41

‡ This is a mistake for 10 C W N 205

6 Ch Div. 82 (1877), <i>Duckett v. Gover</i> ...R...10 C W N 682=38 C 657 ... 217	98 California 676, <i>Harris v. Harrison</i> ...Appl...4 O L J 570=11 C W N 65 ... 840
6 Ch D 297, <i>Flower v. Lloyd</i> ...F...3 C L J 119 ... 284	8 Comstock N Y 264, <i>Calder v. Sisson</i> ...F...4 C J 510 ... 672
(1871) 6 Ch App 822, 828, <i>Re Rivere Steamer Company; Mitchells claim</i> ...F...4 C L J 94 (P.C.)=3 Bom L R 501=10 C W N 874=1 M L T 199=3 A L J 525= 16 M L J 800=38 C 1047=2 N L R 180 ... 594 & 595	4 Coun. 259, <i>Carley v. Dean</i> ...R and...4 F C L J 162=38 C 881 ... 611
(1877) 7 Ch D 578, <i>Jackson v. N E Ry Co</i> ...R... 4 C L J 240 ... 682	4 De G F and J 456; 81 L J Ch 429, <i>In the matter of the Risco Coal and Iron Company</i> ...R...3 C L J 67=33 C 927 ... 300
L R 10 Ch. D 816, <i>Sharp v. Lush</i> ...Appr...31 P R 1906=183 P L R 1906 ... 38	De G J and S 873 (418), <i>Brooke v. Lord Mostyn</i> ... <i>Refd. to</i> & F...29 M 58=16 M L J 14 ... 933
10 Ch. D p 327, <i>Flower v. Lloyd</i> ...R...16 M L J 59 ... 881	5 De G M & G 785, <i>Toft v. Stevenson</i> ...R...9 O C 284 ... 610
14 Ch D 568, <i>Groaves v. Tofield</i> ...R...A W N (1906), 17=3 A L J 100=28 A 315 ... 785 & 786	(1854) 8 Drees 25, <i>Ivon v. Elwes</i> ...R...4 C L J 246 ... 692
16 Ch D 41, <i>In re Birchall Wilkon v. Birchall</i> ...R...20 M 104 ... 324 & 325	8 East's Reports 308, <i>Winter v. Brockwell</i> ...R... A W N (1906) 216=3 A L J 765=28 A 741 ... 422
16 Ch D 151, <i>Child & Co v. Thorley</i> ...F...3 C L J 260 ... 35	5 E & B 83, <i>Gardner v. Walsh</i> ...R...3 C L J 368=10 C W N 788=33 C 812... 162
(1880) L R 18 Ch D 254, <i>Banner v. Berridge</i> ... R...4 C L J 94 (P.C.)=3 Bom L R 501 =10 C W N 874=1 M L T 199=3 A L J 525=16 M L J 300=33 C 1047=2 N L R 180 ... 594 & 595	4 E and B 459, <i>Roberts v. Phillips</i> ...R...4 C L J 41=33 C 861 ... 897
21 Ch D 469 (476), <i>Shepard v. Jones</i> ...R...9 O C 18 ... 901	L R 7 E and I App 448, <i>Fulton v. Andrew</i> ... <i>Appr</i> ...9 C W N 769 (P. C.)=7 Bom L R 854=29 B 530=15 M L J 271=3 A L J 68=32 I A 142 ... 989
(1822) 22 Ch D 511 (516), <i>Sutton v. Sutton</i> ...R ...4 C L J 246 ... 682	18 Eq. 320, <i>Paine v. Jones</i> ...R...10 C W N 747=3 C L J 629=38 C 915 ... 442
23 Ch D 690, <i>Hickson v. Darlow</i> ...R...3 A L J 320=A W N (1906), 418=28 A 607...792	20 Eq. 626, <i>The Attorney General v. Hackney Local Board</i> ...R...9 O C 275 ... 281
(1884) 27 Ch D 220, <i>Boxall v. Boxall</i> ...R...3 C L J 422 (S.B.)=10 C W N 678=38 C 718 ... 28	(1868) L R 6 Eq. 437, <i>Hopkins v. Worcester and Birmingham Canal Proprietors</i> ...R... 4 C L J 246 ... 682
27 Ch D 220, <i>Boxall v. Boxall</i> ...F...10 C W N 602=38 C 657 ... 217	L R 7 Ex. 26, <i>Clough v. London and N W Ry Co</i> ... <i>Refd. to</i> ...3 C L J 260 ... 35
27 Ch D 287, <i>Fussell v. Dowding</i> ...D...3 C L J 224 ... 863	L R 7 Ex. 111, <i>Frost v. Knight</i> ...F...137 P R 1906 ... 565
30 Ch D 57, <i>Gandy v. Gandy</i> ...R...3 A L J 456 =A W N (1906) 206=28 A 681... 248	L R 2 Exch. 9, <i>Nuttall v. Bracewell</i> ...F...4 C L J 370=11 C W N 85 ... 840
30 Ch D 890, <i>In re Harrison Turner v. Hallard</i> ...F...3 C L J 515 ... 521	3 Exch. 748, <i>Wood v. Waud</i> ...R...4 C L J 370 =11 C W N 85 ... 840
36 Ch D 453 (464), <i>Reynolds v. Coleman</i> ...R... 30 B 107 ... 575 & 576	6 Exch. 358, <i>Embrey v. Owen</i> ...F...4 C L J 370=11 C W N 85 ... 840
39 Ch Div. 127 (1880), <i>Newbould v. Smith</i> ...R... 11 C W N 107=38 C 278 ... 507	6 Exch. 358, <i>Embrey v. Owen</i> ...R...4 C L J 370 =11 C W N 85 ... 840
38 Ch D 288, <i>Bodaley v. Consolidated Bank</i> ...F ...10 C W N 818 ... 658	(1852) 7 Exch. 246, <i>Hart v. E. U. Ry. Co</i> ...R ...4 C L J 246 ... 682
43 Ch D 125, <i>Frank v. Harrison</i> ...D...3 C L J 205=38 C 425 ... 677	(1852) 8 Exch. 116, <i>Eastern Union Ry Co. v. Hart</i> ...R...4 C L J 246 ... 682
45 Ch D 51, <i>In re Parsons Stockley v. Parsons</i> ...R...3 C L J 224 ... 868	3 Ex. D 164 (173), <i>Mirabito v. Imperial Ottoman Bank</i> ...R...38 C 547... 855

4 Ex D 88, Cooper v. London, Brighton, and South Coast Ry. Co...F... 16 M L J 87=29 M 118 ... 389	25 L J Ch 795, Rooke v. Kensington...F...2 N L R 57 ... 381
15 E R 251=14 Moo. P. C. 121 (186), Corlett v. Radcliffe...R...16 M L J 427=1 M L T 351 ... 888	29 Law J Ch 827, The Liverpool Borough Bank v. Turner...R...1 M L T 407=29 M 526 ... 668, 669
L R 1 H C 129, Ramsden v. Dyson...R...2 N L R 4 ... 529	30 L J Ch 395, The Governors of St Thomas Hospital v. Charingcross Railway Company...R...9 O C 811 (B) ... 57
L R 2 H L 149, Cooper v. Phipps...F...181 P R 1906 ... 353	35 L J Ch 317, Smith v. Owen...R...8 A L J 637=A W N (1906) 257 ... 420
L R 2 H L 325, Oakes v. Turquand...F...3 C L J 260 ... 85	48 L J Ch 790, Goodson v. Richardson...R...2 N L R 4 ... 529
(1868) L R 3 H L 249, Evans v. Small Combe...R...4 C L J 198 ... 6	65 L J Ch 375, Collinson v. Jeffery...F...2 N L R 137 ... 918
3 H L 388, Rylands v. Fletcher...F...1 M L T 393 ... 115	67 L J Ch 694, Felix Hadley and Company v. Hadley...R...2 N L R 179 ... 722
6 H L C 746, Cooper v. Slade...Refd. to...15 M L J 449=29 M 166 ... 18	32 Law J C P 118, Word v. Beek...R...1 M L T 407=29 M 526 ... 668 & 669
(1850) 2 Ha and Tw. 224, Cowell v. Watt...R...4 C L J 198 ... 6	23 L J Ex 182 ...R...21 T L R 73 ... 360
4 H and N 549, Cornish v. Abington...Refd. to...10 C W N 813 ... 358	29 L J Ex 115, Dodge v. Pringle...D...8 C L J 363=10 C W N 788=33 C 812 ... 162
(1874) L R 7 H L 364, Charter v. Charter...F...3 C L J 224 ... 366	32 L J Q B 77, Stadhard v. Lee...Appl...1 M L T 387 ... 197
3 Harris and Jhonson on 383, Walsh v. Gilmer...R and F...4 C L J 163=33 C 881...611	50 Law J Q B 421, Balthamy v. Boneh...R...1 M L T 407=29 M 526 ... 668 & 669
42 Ill 375, Soaps v. Eichberg...R...8 C L J 363=10 C W N 788=33 C 812 ... 162	60 L J (Q.B.) 640, Caerlem Tinsplate Company v. Hughes...Expl...10 C W N 814=33 C 1237 ... 68
162 Ill 232, Thomson v. Davidson...Refd. to...3 C L J 260 ... 85	(1680) 2 Lev Rep 182, Abram v. Cunningham...R...3 C L J 422 (S.B.) 10 C W N 673=33 C 713 ... 23
Ind. Jur. 2 N S 235, Jogender Narain v. Emily Temple...F...10 C W N 566 ... 153	16 L R A 468, Walton v. Campbell...R...3 C L J 363=10 C W N 788=33 C 812 ... 162
L R 5 Com. L 443 (Exch. C), Donoughmore v. Forest...R...3 A L J 476=A W N (1906) 182=28 A 696 ... 123	43 L R A 388, St Barnabas v. M I Electric Co. ...R...11 C W N 147=4 C L J 537 ... 155
17 L R Ir p 277, In re Hamilton...R...16 M L J 558 ... I	10 L R Ir 335, Jagoe v. Harrington...R...8 A L J 476=A W N (1906) 182=28 A 696 ... 123
Ir R 6 Com 34, Gilman v. Murphy...R...3 A L J 476=A W N (1906) 182=28 A 696 ... 123	26 L T 704, Taubman v. Pacific Steam Navigation Company...considered...1 M L T 387 ... 197
1 Johnson and Hemming 702, Benham v. Keane...R...A W N (1906), 17=3 A L J 100=28 A 315 ... 785, 786	31 L T 194, The Bolton Election Petition...D...15 M L J 449=29 M 166 ... 18
(1854) Kay 678, Prance v. Symson...R...4 C L J 94 (P. C.)=8 Bom L R 501=10 C W N 874=1 M L T 199=3 A L J 525=16 M L J 300=33 C 1047=2 N L R 130 ... 594, 595	4 M and G 969 (976), ————F...8 Bom L R 252 ... 644
(1861) 30 L J C P 257, 264, Fitz John v. Mackinder...F...7 Bom L R 655=30 B 37 ... 662	2 M & Gr 1890, Cariss v. Pattersall...D...3 C L J 363=10 C W N 788=33 C 812 ... 162
(1841) 10 L J Ex 545, 553, Panten v. Williams...F...7 Bom L R 655=30 B 37... 662	(1840) C. M & W 677, Raleigh v. Atkinson...Refd to...7 Bom L R 697=30 B 275 ... 62
9 L J Ch. 113, Jones v. Creswick...F...2 N L R 137 ... 918	(1841) M & W 261, Thompson v. Gileson...Refd to...7 Bom L R 697=30 B 275 ... 62

9 M and W 404, <i>Foreshfield v. Reed</i> ...R...4 C L J 41=33 C 861 ... 897	6 P D 29, <i>Taylor v. Taylor</i> ...R...10 C W N 566 ... 158
(1841) M and W 677, <i>Page v. Pearce</i> ...Refd. to ...7 Bom L R 697=80 B 275 ... 62	8 P D 171, <i>Parker v. Felgate</i> ...R...3 A L J 519 =A W N (1906), 210=28 A 715 ...657
(1842) 10 M and W 688, <i>Christie v. Richardson</i> ...Refd to...7 Bom L R 697=80 B 275 ... 62	(1885) 10 P D 165, <i>The Bell Cairn</i> ...Refd to...7 Bom L R 659=80 B 101 ... 25
11 M and W 827 at p 880, <i>Poole v. Huskinson</i> ...R...3 C L J 585=38 C 1248 ... 74	(1785) 3 P Wms 358, <i>King v. King</i> ...R...4 C L J 246 ... 682
13 M and W 843, <i>Davidson v. Cooper</i> ...R...3 C L J 868=10 C W N 788=33 C 812	(1846) 2 Phill 117, <i>Duke of Leeds v. Earl of</i> <i>Amherst</i> ...R...4 C L J 198 ... 6
... 162	(1860) <i>Plowd</i> 476, <i>Grayshbrook v. Fox</i> ...R...3 C L J 422 (S.B.)=10 C W N 678=33 C 713 ... 28
4 Mason 115, <i>Dexter v. Spear</i> ...F...4 C L J 890 ... 418	1 Q B 1, <i>Asher v. Whitlock</i> ...R...9 O C 161 ... 740
167 Mass 426, 57 Am St Rep 466, <i>Lee v. Butler</i> ...R...3 C L J 368=10 C W N 788=33 C 812 ... 162	(1867) L R 1 Q B 97, <i>Edmunds v. Bushell</i> ...R ...1 M L T 387 (F.B)* ... 87 & 88
50 Mo 157, <i>Farmers' Bank v. Myers</i> ...R...3 C L J 868=10 C W N 788=33 C 812	1 Q B 116, <i>Dunn v. The Queen</i> ...F...38 C 669 ... 845
... 162	2 Q B 491, <i>The Mayor of Kingston on Hull</i> <i>v. Harding</i> ... Expl & D...3 C L J 422 (S. B.)=10 C W N 718=33 C 718... 844
Morton 90 (1831) 2nd edition by Montrieu p 586, <i>Juggomohun v. Neemoo Dossee</i> ...R...10 C W N 765=33 C 1119... 474	(1848) 4 Q B 182, <i>Yates v. Aston</i> ...R...4 C L J 246 ... 682
2 Moores' P C 480, <i>Barry v. Butlin</i> ...Appr... 9 C W N 769 (P.C.)=7 Bom L R 854 =29 B 590=15 M L J 271=3 A L J 68=32 I A 142 ... 939	4 Q B 669, <i>Comings v. Heard</i> ...R and F...4 C L J 162=33 C 881 ... 611
12 Moo P C 181, <i>Miner v. Gilmour</i> ...F...4 C L J 870=11 C W N 85 ... 840	6 Q B 155, <i>Schibsbay v. Westenholtz</i> ...R...126 P R 1906 ... 146 & 147
14 Moo P C 121 (136)=15 E R 251, <i>Corlett v.</i> <i>Radcliffe</i> ...R...16 M L J 427=1 M L T 351 ... 888	9 Q B 48, <i>Board v. Board</i> ...Expl & Distd...4 C L J 424† ... 440
(1838) 4 My and Cr. 215, <i>Morison v. Morison</i> ... F...3 C L J 119 ... 284	10 Q B 256, <i>Mitchell v. Lancashire and York-</i> <i>shire Ry. Company</i> ...F...1 M L T 387 ... 197
20 N Y Law, 208, <i>Schenck v. Schenck</i> ...F...4 C L J 890 ... 418	12 Q B 810...F...21 T L R 125 ... 772
40 N Y 191, <i>Corning v. Troy Factory</i> ...F...611 L J 370 ... 529	12 Q B 576, <i>Clegg v. Dearden</i> ...R and F...4 C L J 162=33 C 881 ... 611
116 N Y 19, <i>Sweet v. Morrison</i> ...R and F...4 C L J 162=33 C 881 ... 611	2 Q B D 48, <i>In Joyner v. Weeks</i> ...R...9 O C 65 ... 745
140 N Y 894, <i>Geyer v. Snyder</i> ...F...3 C L J 260 ... 35	2 Q B D 439, <i>In re Wear</i> ...R...3 A L J 592 (F.B.)=1 M L T 252=A W N (1906), 226 ... 580
151 N Y 204, <i>Duryea v. Mackey</i> ...F...3 C L J 260 ... 35	8 Q B D 578...R...21 T L R 194 ... 696
L R 1 P C 219, <i>Pease v. Glohac</i> ...F...3 C L J 260 ... 35	4 Q B D 82, 85, <i>Moyse v. Newington</i> ...R...33 C 547 ... 355
L R 3 P C 405, <i>Rodger v. The Comptoir D'es</i> <i>Compte de Paris</i> ...R & F...3 C L J 67 =33 C 927 ... 300	(1882) 8 Q B D 179, <i>In re Hall Rolling Mills</i> <i>Company v. Douglas Forge Company</i> ...Distd...7 Bom L R 246=30 B 178 ... 238
L R (1894) P D 362, <i>Wieland v. Bird</i> ...F...10 C W N 566... 158	9 Q B D 189, <i>Ford v. Kettle</i> ...R...4 C L J 41= 33 C 861 ... 897
2 P & D 369, <i>In the Goods of Puncard</i> ...R... 16 M L J 553 ... I	9 Q B D 219, <i>Reg v. Castro</i> ...R...3 A L J 592 (F.B.)=1 M L T 252=A W N (1906), 226 ... 580
L R 3 P D 167, <i>In the Goods of Lavery</i> ...R...16 M L J 558 ... I	

* This is a mistake for 1 M L T 377 (F.B).

† This is a mistake for 4 C L J 442.*

10 Q B D p 297, Abouloff v. Oppenheimer & Co. ...R...16 M L J 59 ... 881	72 R R 298 at p 311, Keir v. Leeman...R...3 A L J 506=A W N (1906) 212=28 A 718
10 Q B D 572, Flower v. Sadler...R...3 A L J 506=A W N (1906) 212=28 A 718	... 477
11 Q B D 155, Ormerod v. Todmorden...Appl... 4 C L J 370=11 C W N 85 ... 840	1 Sm L C 767 (11 th Edn), Master v. Miller...R ...3 C L J 363=10 C W N 788=33 C 812 ... 162
11 Q B D 440 (at p 455), Abrath v. North East- ern Railway Company...R...16 M L J 18 ... 661	1 Sm L C 801 (11th Ed), Master v. Miller...R ...3 C L J 363=10 C W N 788=33 C 812 ... 162
11 Q B D 455, Abrath v. The North Eastern Railway Company...R...10 C W N 253 (F.B.) ... 661	2 Sm L C 635, Cf. Taylor v. Horde ...R...2 N L R 32 ... 620
15 Q B D 561, Herman v. Jeuchner...F...15 M L J 478=29 M 72 ... 43	T M 387 ...R...21 T L R 56 ... 518
20 Q B D 152, In Robey v. Snaefell Mining Company...F...30 B 167 575 & 576	1 T R 20, Stokes v. Lewis...F...3 C L J 288...822
20 Q B D 635, Wennhak v. Morgan...D...4 C L J 890 ... 418	1 T L R 572, Jones v. Williams...Appl...4 C L J 390 ... 418
(1889) 23 Q B D 239 (242), Tancred v. Delagoa Bay and East Africa Ry Co...R and F...4 C L J 216=33 C 985 ... 924	22 Times L R 195 (1905), Water-house v. Water- house...not F...10 C W N 765=33 C 1119 ... 474
L R Q B D (1900), 22, Cornford v. Carlton Bank ...F...86 P R 1906 ... 663	133 U S 547, Sampson v. Hoddinott ...F... 4 C L J 370=11 C W N 85 ... 840
24 Q B D 742, Kearley v. Thomson...F...15 M L J 478=29 M 72 ... 43	134 U S 530 (535) Brown v. Lake Superior...F... 3 C L J 260 ... 85
25 Q B D p 314, Vadala v. Lawes...R...16 M L J 59 ... 881	17 W R (Eng) 139, Lester v. Gooch...Expl & D ...3 C L J 422 (S.B.)=10 C W N 678= 33 C 713 ... 344
25 Q B D 544, In re, Smith and Service and Nelson and sons...R...10 C W N 814= 33 C 1237 ... 68	6 Wallis 80, Wood v. Steel...R...3 C L J 363= 10 C W N 788=33 C 812 ... 162
41 R I 133, Harris v. Social M Co R and F...4 C L J 162=33 C 881... 611	15 Wendell, N Y 218, 71 Sergeant and Rawle P. 218, Elder v. Rotise...Appl...4 C L J 510 ... 612
	29 Wis 169, Blodgett v. Hitt ...Refd to...3 C L J 260 * ... 33

TABLE OF HEADINGS AND SUB-HEADINGS IN THIS PART.

Abadi 1	Act II of 1874 (Administrator-General) .. 28	
Abandonment "	—XIV of 1874 (Scheduled Districts) ... "	
Abatement "	—IX of 1875 (Indian Majority) ... "	
Abwab... .. 2	—I of 1877 29	
Accounts 3	—III of 1877 "	
Account-books "	—XV of 1877 "	
Accretion "	—VIII of 1878 "	
Accrual of right to sue 5	—XVIII of 1879 (Legal Practitioners)...20, I	
Acknowledgment "	—V of 1881 (Probate and Administration). 31, I	
Acquiescence. 6	—XXVI of 1881 (Negotiable Instruments). 36	
Actionable claim 7	—II of 1882 (Trusts). .. 40	
Acts 8	—IV of 1882 (Transfer of Property). .. 43	
1. Imperial Acts.		
Act XXXII of 1880 (Interest) "	—V of 1882 (Easements). "	
—XIX of 1841. "	—VI of 1882 (Companies). ....48, II	
—XIX of 1848 10	—XV of 1882 (Presidency Small Cause Courts). 45	
—XX of 1847 (Copyright)... .. "	—VII of 1887 (Suits Valuation). ... 46	
—XVIII of 1850 (Protection of Judicial Officers) "	—IX of 1887 (Provincial S. O. Courts). 48	
—XXI of 1850 (Caste Disabilities Removal) 12	—V of 1888 (Inventions and Designs). .. "	
—XII of 1855 (The legal Representatives Suits) 13	—IV of 1889 (Merchandise Marks). "	
—XIII of 1855 (Fatal Accidents) "	—VII of 1889 (Succession Certificate). 48, III	
—XIV of 1855 (Widow Re-marriage) "	—VIII of 1890 (Guardians and Wards). 50	
—XXV of 1856 (Lunatics)... .. "	—IX of 1890 (Railways). 55	
—XXI of 1859 (Societies Registration) 15	—IV of 1892 (Partition). 56	
—XX of 1865 (Religious Endowments)... 16	—I of 1894 (Land Acquisition), 57, III	
—XVI of 1866 (Registration). 18	—XV 1895 (Crown Grants). 67	
—III of 1865 (Garris). "	—IX of 1897 (Provident Funds). "	
—X of 1865 (Succession). 18, I	—X of 1897 (General Clauses). "	
—XIII of 1865 (Pure Intestate Succession). 23	—VI of 1898 (Post Offices). "	
—XXV of 1866 (Undisputed Deposits)... .. "	—II of 1899 (Stamp). "	
—XXVII of 1867 (Trustees) "	—IX of 1899 (Indian Arbitration). " "	
—XXX of 1867 (Printing Presses) "	—XI of 1899 (Court-Fees Amendment) 69	
—IV of 1869 (Revenue) "	—V of 1902 (Administrator-General and Official Trustees) "	
—VII of 1870 (Court Fees) 24	—IV of 1906 (Provident Funds Act, Amendment).. "	
—XXIII of 1871 (Revenue) "	2. Bengal Acts.	
—I of 1872 27	Act X of 1880 (Rent) 60	
—X of 1873 (Revenue) "	—XI of 1880 (Revenue Sale Law) ... 72	
	—III of 1881 78	

Act VIII of 1865	73	Act XV of 1893 (N. W. P. & Oudh Municipalities)	191
—VII of 1868	"	—III of 1899 (N. W. P. & Oudh Court of Wards)	"
—VIII of 1869 (Rent)	"	—Act I of 1900 (N. W. P. & Oudh Municipalities)	"
—V of 1870 (Port Commissioners) ...	74	—II of 1901 (N. W. P. Tenancy) ...	192
—VI of 1870 (Chowkidari)	"	—III of 1901 (N. W. P. and Oudh Land Revenue)	190
—VI of 1876 (Oota Nagpur Encumbered Estates)	75	6.—Oudh Acts.	
—VII of 1876 (Land Registration) ...	76	Act XIII of 1886	183
—VIII of 1876 (Estates Partition) ...	"	—XXVI of 1886 (Oudh Sub-Settlement) ...	"
—I of 1879	77	—I of 1889 (Oudh Estates)	188
—IX of 1879 (Court of Wards)	"	—XVII of 1876 (Oudh Land Revenue) ...	184
—VI of 1890 (Drainage)	78	—XVIII of 1876 (Oudh Laws)	185
—VII of 1890 (Public Demands Recovery)	79	—XXII of 1886 (Oudh Rent)	187
—IX of 1890 (Bengal Cess)	80	—IX of 1889	188
—III of 1884 (Bengal Municipality) ...	"	—V of 1894	189
—VIII of 1885 (Bengal Tenancy)	"	—IV of 1901	"
—XII of 1887 (Bengal Civil Courts) ...	99	7.—Punjab Acts.	
—I of 1895 (Public Demands Recovery) ..	100	Act IV of 1872 (Punjab Laws)	"
—I of 1897 (Amending Act I of 1895) ...	102	—XIII of 1884 (Punjab Municipalities)	140
—V of 1897	"	—XVIII of 1884 (Punjab Courts)	"
—III of 1898 (Amending Act VIII of 1885) ..	"	—XVI of 1887 (Punjab Tenancy)	142
—III of 1899 (Calcutta Municipality) ...	"	—XVII of 1887 (Punjab Land Revenue) ...	149
—I of 1903	"	—XX of 1891 (Municipalities)	150
3.—Bombay Acts.		—XII of 1896 (Punjab Excise)	"
Act XX of 1880 (Haks)	"	—I of 1900 (Punjab Limitation Act) ...	"
—II of 1864	"	—Act XIII of 1900 (Punjab Alienation of Land)	"
—XIV of 1869 (Bombay Civil Courts) ...	"	—I of 1904 (Punjab Loans Limitation) ..	151
—I of 1874 (Bombay Tramways)	"	8.—N. W. P. Frontier Act.	
—III of 1874 (Bombay Vatan)	"	—II of 1903 (Bundelkhand Alienation of Land Act)	152
—X of 1876 (Revenue Jurisdiction) ...	104	Act of State	"
—VII 1878 (Forest)	"	Ad interim protection	"
—V of 1879 (Bombay Land Revenue Code) ..	"	Administration	"
—XVII of 1879 (Dekkhan Agriculturists' Relief)	105	Administration by Court	"
—I of 1880 (Khoti)	107	Administration of trust	"
—IV of 1898 (Bombay City Improvement) ..	"	Administration-suit	153
4.—Madras Acts.		Administrator	"
Act XXVII of 1860 (Boundary)	"	Administrator-Generals Act	"
—II of 1864 (Madras Revenue Recovery) ..	"	Adoption	154
—VIII of 1865 (Rent Recovery)	109	Advancement	155
—I of 1876	118	Adverse possession	"
—IV of 1884 (District Municipalities) 114, IV	"	Advocate	158
—I of 1886 (Ahkari)	110	Advocate-General	"
—IV of 1889 (Salt)	"	Affidavit	"
—III of 1895 (Hereditary Village-Offices) ...	"	Agent	"
—IV of 1899 (Amending Reg. V of 1894) ..	118	Agra Tenancy Act	159
5.—N. W. P. Acts.		Agreement	"
Act XVI of 1865 (N. W. P. Revenue Courts)	118	Agricultural lease	"
—IX of 1878 (N. W. P. and Oudh Land Revenue)	119		
—XII of 1881 (Rent)	120		

Agricultural Tenant	159	Board's Circulars	187
Agriculturist	"	Board of Revenue	"
Alienation	"	Bombay Civil Courts Act	"
— of Land Act (Punjab)	160	— Land Revenue Code	"
Alluvion	"	— Mamlatdar's Courts Act	"
Alluvion and diluvion	161	Bond	"
Alteration	"	Boundaries	"
Alternative claims	163	Broker	"
Amendment	"	Buddhist Law (Divorce)	"
Annuity	164	— (Inheritance)	188
Appeal	"	— (Marriage)	189
— 1.— (General)	"	Bundelkhand Alienation of Land Act	190
— 2.— (Letters Patent)	171	Burden of proof	"
— 3.— (Parties)	172	Burial	194
— 4.— (to Privy Council)	"	Burmese Law (Keitima Adoption)	"
— 5.— (Revenue Appeal)	173	Burning Ghat	"
— 6.— (Second Appeal)	"	Cancellation	195
— 7.— (Further Appeal)	175	Carrier	196
Appellate Court	"	Carriers	"
Appointed heir	176	— Act	197
Apportionment	"	Caste Disabilities Removal Act	198
Arbitration	"	Cause of action	"
— Act	178	Gavent	199
Ariat	"	— Emptor	"
Articles of Association	"	Certified purchaser	"
Assessment	"	Cess	200
Assets	"	— Act (Bengal)	"
Assignment	"	Chadar Andazi	"
Association	179	Chakran Land	"
Attached property	"	Champerty	"
Attaching creditor	"	Charge	"
Attachment	"	Charter Act	201
Attestation	180	— party	"
Attorney and Client	181	Chauhans	"
Auction-Purchaser	"	Chief Court of the Punjab	"
Award	182	Chaukidari Chakran Land	"
Babuana Grant	183	Chit Fund	202
— Property	"	Chitty	"
Bediment	"	Chota Nagpur Encumbered Estates Act	"
Batis and Zemindar	"	Chundawand	"
Barrister	184	Committee	"
— and Client	"	Civil Court	203
Bastu land	"	— (Lower Burma)	"
Belchambers' Rules and Orders	"	Civil Courts	"
Benamsee Transactions	"	Civil Courts Act (Bengal)	"
Bengal Cess Act	186	Civil Courts Act (Bombay)	"
— Civil Courts Act	"	— Procedure Code (Act XIV of 1882)	203, V
— Drainage Act	"	Clog	222
— Municipalities Act	"	Collector	"
— Rent Act	187	Collectorate	"
— Rent Recovery Act	"	Commission	"
Bills of Exchange Act (of England)	"	Commissioner	223
Bill of Lading	"	Committee	"
Birth Tenures	"	Common Carriers	"

Companies Act (VI of 1884)	323	Damdapat	410
Company	"	Darkhast Rules	"
Compensation	"	Dar-putai Lease	411
Compensation for Breach of Contract	324	Debts	"
Compromise	"	Debutter	412
Comptroller-General	325	-----Estate	"
Conflict of Laws	"	Declaration	"
Consideration	"	-----of title... ..	"
Construction	327	Declaratory Decree	"
-----1 (of Acts)	"	Declaratory suit	413
-----2 (of Articles of Association)	329	Decree	414, VII
-----3 (of Decree)	"	Dedication	417
-----4 (of Deeds)	330	Defamation	"
-----5 (Grants)	333	Dekhan Agriculturists' Relief Act	418
-----6 (of Kabuliyat)	334	Delegation	"
-----7 (of Lease)	"	Demolitions	"
-----8 (of Wajib-ul-arz)	"	Deposit	419
-----9 (of Wills)	"	Deposition	"
-----10 (of Words)	335, VI	Dhar-dhura	"
Contract	336	Diluvion	"
Contract Act (IX of 1872)	340	Director	"
Contract Act (Travancore)	359	Dispossession	"
Contribution	360	Discretion	"
Conversion	361	District Municipalities Act (Madras)	"
Converts	362	Distress	"
Co-owners	"	Division Court	"
Copyright Act	"	Divorce	"
Corporation	"	Divorce Act	"
Corporation of Bombay	"	Dobas	"
Co-sharers	"	Documents	"
Co-sharer and Lambardar	366	Domicile	420
Costs	"	Drainage Act (Bengal)	"
Co-tenant	"	Durmokuridar	"
Council	367	Easements	"
Counsel	"	Easements Act (V of 1882)	"
Counsel's Fees	"	Ejectment	422
Court	"	Ejectment Suit	423
Court Fees	368	Election (Municipal)	424
Court Fees Act (VII of 1870)	369, VI	Encroachment	"
-----of Wards	377	Endowed property	"
-----of Wards Act (Bengal)	"	Endowment	"
Covenant	"	Enfranchisement	"
Crops	"	English Law	"
Crown	"	Enhancement of rent	"
-----debt	"	Equitable Claim	"
-----Grants Act	"	Equitable Estoppel	"
-----Lands	"	Equitable mortgage	425
Quarators Act	"	Equitable Plea	"
Quarant	"	Equitable Relief	"
-----of Trade	380	Equitable Set off	"
Quarant (peculiar to Punjab)	381	Equity	"
Quarant Menons	409	Estate Partition Act	"
Quarant	"	Estoppel	"
Quarant	"	Evidences	"
Quarant	"		

TABLE OF HEADINGS AND SUB-HEADINGS, IN THIS PART.

227

Evidence Act (I of 1873).	433	High Court Rules (N.W.P.) ..	466
Excavations,	442	High Way	"
Exchange. "	"	Hills	"
Excise Act.	"	Hill Tracts	"
Excise Act, (Punjab).	"	Hindu Law	"
Execution.	"	—1.—(General)	467
Execution of Decree.	442, VII	—2.—(Adoption)	"
Execution proceedings.	455	—3.—(Alienation)	473
Execution Sale.	"	—4.—(Ceremonies)	"
Executor.	"	—5.—(Dayabhaga)	"
Exercuter de son Tort.	"	—6.—(D&bs)	474
• Executory Contract.	456	—6-a.—(Divorce)	477
Expediency	"	—7.—(Father and Son)	"
Ex parte decree	"	—8.—(Gift)	"
Expert opinion.	"	—9.—(Guardianship)	"
Experts.	"	—10.—(Impartible Estate)	"
Ex-proprietary holding.	"	—11.—(Inheritance)	481
Extension of time.	"	—11-a.—(Jains)	486
False imprisonment	"	—12.—(Joint Family)	"
Family arrangement.	"	—13.—(Legitimacy)—	494
Fiduciary relation... ..	458	—14.—(Maintenance)	"
Fishery	"	—15.—(Manager)	495
Fixtures... ..	"	—16.—(Marmakatayam Law)	496
Foreclosure	"	—17.—(Marriage)	497
Forest Act VII of 1879 (Bombay)	"	—18.—(Partition)	498
Forest Land	"	—19.—(Pre-emption)	501
Forfeiture	"	—20.—Religious Endowments)	"
Forma Pauperis	"	—21.—(Religious Matters)	502
Fraud... ..	459	—21-a.—(Re-Marriage)	504
Fraudulent transfer	460	—22.—(Re-union)	"
Gambling	"	—22-a.—(Restitution of Conjugal Rights)	"
Gambling in Litigation	"	—23.—(Reversioners)	"
General Clauses Act	"	—23 a.—(Schools of Law)	507
Ghatwali Tenures... ..	"	—24.—(Self-acquisition).. ..	"
Gift	"	—25.—(Stridhan)	508
Good faith	"	—26.—(Succession)	510
Good-will	"	—27.—(Texts)	512
Goshain	"	—28.—(Trusts)	513
Government	"	—29.—(Widow)	515
Governor-General.. ..	461	—30.—(Will)	518
Government Promissory Note	"	—31.—(Woman's estate)	524
Grant... ..	"	Hindu Wills Act	"
Gumpies	"	Holiday	"
Grantor	"	Holidays	"
Guardian	"	House	"
Guardian ad litem	"	Hundi... ..	525
Guardian and Minor	462, VII	Husband	"
Guardian and Ward	463	Husband and Wife	"
Guardian and Wards Act (VIII of 1890). ..	464	Idiot	"
High Court.	465	Idol	"
—Bales (Bombay)	"	Illegitimate children	"
—(Calcutta)	"	Illegitimate Person	"
—(Madras)	"	Immovable property	"
—(Madras)	"	Improvements	"

Inam	526	Justertli	585
Inamdar	527	Justice Equity and good Conscience	556
Inconsistent pleadings	"	Kabuliat	556
Indian Companies Act	"	Karnavan	"
Indian Majority Act	"	Karnavan and Anadranan	"
Indian Succession Act	"	Kathiawar State	"
Inheritance	"	Khata... ..	"
Injunction	528	Khata Books	"
Injunction (Mandatory)	530	Khoja Mahomedkass	"
Insanity	531	Khorposh Grant	"
Insolvency	"	Khoti Act	557
Insolvency Act (St. 11 & 12, Vic., ch. 21)... ..	533	Khudkaht	"
Insolvency Act (St. 41 & 42, Vic., ch. 42)... ..	"	Kritima son	"
Insolvent Debtor's Act of 1848	"	Kumaon Rules, 1894	"
Inspection	534	Kutchi Mamons	"
Insurance	"	Laches	558
Interest	"	Lakhiraj land	"
Interest (Penalty)... ..	537	Lakhiraj Title	"
Interlocutory orders	"	Lambardar	"
Intermediate land-holder	"	Lambardar and Co-sharer	"
International Law	"	Land Acquisition Act	559
Interrogatories	"	Landlord... ..	"
Intoxicating drugs	"	Landlord and Tenant	"
Inventions and Designs Act (V of 1889)... ..	"	Land Registration Act (Bengal)	560
Irrigation	538	Land Revenue Act (C. P. Act XVI of 1889) ..	"
Jains	"	Land Revenue Act (N. W. P. and Oudh) ..	570
Jalkar rights	"	Land Revenue Act (Punjab)	"
Jats	539	Land Revenue Code (Bombay)	"
Joinder of causes of action	"	Land Revenue Code (Berar)	"
—, of claims... ..	"	Land Revenue Rules	"
Joinder of parties	"	Land and Revenue Regulation	"
Joint decree	"	Law Merchant	571
Joint decree-holders	"	Lease	"
Joint owners	"	Legacy	572
Joint possession	"	Legacy (Specific)	"
Joint-property	542	Legal Practitioner	573
Joint tenancy	"	Legal Practitioner's Act (XVIII of 1879) ..	"
Joint tort-feasors... ..	543	Legitimacy	"
Jote	"	Lessor and Lessee	"
Judge	"	Letters of Administration	"
Judgment	"	Letters Patent (Bombay)	574
Judicial inquiry	544	Letters Patent, 1865 (Calcutta)	575
Judicial Officers	"	Letters Patent (Madras)	577
Judicial Officers Protection Act	"	Letters Patent (N. W. P.)	579
Judicial order	545	Lex Loci	580
Judicial Proceeding	"	Lex rei sitae	"
Jurisdiction	"	Libel	"
—1.—(General)	"	License	"
—2.—(of Civil Courts)	548	Life tenant	581
—3.—(of Civil and Revenue Courts)... ..	551	Light and Air	"
—4.—(of High Courts)	554	Limitation	"
—5.—(of Judicial Commissioners)	"	Limitation Act (XIV of 1859)	582
—6.—(of Revenue Courts)	"	Limitation Act (XV of 1877)	583, VII
—7.—(of Settlement Officer)	555		
—8.—(of Small Cause Courts)	"		

Limitation Act (Punjab)	684	Markaman	684
Limitation Regulation (Travancore)	"	Marriage	"
Lispendens	686	Marumakkathayam Law	"
Local Government	687	—1.—(Adoption)	"
Local inspection	"	—2.—(Alienation)	686
Lord Canning's Proclamation of 1858	"	—3.—(Debt)	"
Lower Burma Courts Act	688	—4.—(Gift)	686
Lower Burma Towns and Village Lands (Bur-		—5.—(Maintenance)	"
ma Act IV of 1886)	689	—6.—(Partition)	687
Lunacy	"	—7.—(Tarwad)	"
Lunatic	"	Mashkahari Accounts	688
Lunatics Act	"	Master and Servant	"
Madras Hereditary Village Offices Act	"	Material alteration	"
Madras Bent Recovery Act	"	Medical practitioner	"
Madras Revenue Recovery Act	"	Mercantile Law	"
Magistrate	"	Mercantile Usage... ..	"
Mahomedan Law... ..	640	Merchandise Marks Act	"
—1—(Acknowledgment)	"	Merchant Shipping Act, 1894	"
—2—(Adoption)	"	Merger... ..	689
—3—(Alienation)	"	Mesne profits	"
—4—(Divorce)	642	Mineral rights	670
—5—(Dower)	643	Minerals	"
—6—(Escheat)	644	Mines... ..	"
—7—(Family arrangement)	"	Mining Rights	"
—8—(Gift)... ..	645	Minor	671
—9—(Guardianship)	646	Minor and Guardian	673
—10—(Inheritance)	647	Minor's property	"
—11—(Legitimacy)	"	Misconstruction of deed	"
—12—(Marriage)	"	Misjoinder	"
—13—(Minor and Guardian)	648	Misjoinder of causes of action	"
—14—(Pre-Emption)	"	Misjoinder of Causes of action and of parties 674	
—15—(Restitution of Conjugal Rights)		Misjoinder of parties	"
... ..	649	Mistake	675
—16—(Sale)	"	Mistake of law	"
—17—(Succession)	650	Mokarari Tenure... ..	"
—18—(Trusts)	651	Mortgage	"
—19—(Wakf)	"	—1.—(General)	"
—20—(Will)	655	—2.—(Accounts)	691
Mahsul	657	—3.—(Apportionment)	"
Maintenance	"	—4.—(Conditional sale)	"
Maintenance grant	658	—5.—(Construction)	698
Majority Act	659	—6.—(Contribution)	697
Malabar Law	"	—7.—(Equitable Mortgage)	699
—1.—(Gift)	"	—8.—(Extinction of Security)	700
—2.—(Maintenance)... ..	"	—9.—(Extinguishment of Mortgage)	"
Malabar tarwad	660	—10.—(Foreclosure)	"
Malice... ..	"	—11.—(Forms of Mortgages)	702
Malicious arrest	"	—12.—(Marshalling)	"
Malicious prosecution	661	—13.—(Redemption)	"
Mamlatdar's Courts Act	663	—14.—(Sale)	718
Management	"	Mortgage-Deed	715
Mandatory Injunction	"	Mortgage-Suit	"
Maps	664	Mortgagee	"
Marine Insurance... ..	"	Mortgagor	"

Mortgagor and Mortgages	715	Partition Decree	733
Movable Property	720	—dead	73
Mul-raiyat	71	—of Estates	77
Municipality	71	Partnership	71
Municipalities (Bengal)	71	Part-payment	733
Municipalities (N. W. P. & Oudh)	71	Party-wall	71
Municipalities Act (District Madras)	71	Pasture Land	71
Munsarim	71	Patni Tenure	71
Murder	71	Patta	734
Mustagir	71	Pauper	71
Native Christians... ..	71	—suit	71
—States	71	Payment out of consideration	71
Natural rights	71	—Court	71
Nafraza	721	Pedigree	71
Negligence	71	Peishcush	71
Negotiable Instruments	71	Penal assessment	71
Negotiable Instruments Act	722	Penalty	71
Newspaper	71	Pensions Act (XXIII of 1871)	71
New trial	71	Perjury	71
Next friend	71	Permanent occupancy right	71
Non-joinder of parties	71	—tenure	71
N. W. P. Rent Act	723	Permanently settled estate	735
—Revenue Courts	71	Plaint	71
—Tenancy Act	71	Plea	736
—& Oudh Land Revenue Act	71	Pleader	737
—& Oudh Municipalities	71	—and client	71
Notice... ..	71	Pleader's Fee	71
Nuisance	725	Pleadings	71
Oath	726	Pledge	739
Oaths Acts	71	Plene Administravit	71
Objections	71	Police Commissioner	71
Obstruction	71	Policy of Insurance	71
Occupancy holding	71	Political Agent	71
—Rights... ..	71	Polliems	71
—tenant	729	Port Commissioners Act	71
Official Assignee	71	Possession	71
Orass Child	71	Posthumous child... ..	743
Order absolute	71	—son	71
Oudh Estates Act... ..	71	Power of Attorney... ..	71
—Land Revenue Act	71	Practice	71
—Rent Act	730	—1.—(of High Court)	71
—Sub-Settlement	71	—2.—(Privy Council)	71
Owner	71	—3.—(Miscellaneous cases)	745
Ownership*	71	Pre-emption	746
Pachis Sawal	71	—Suit... ..	770
Pakka adatia	71	Preliminary point	71
Pakki adat	71	Prescription	771
Panchnama	71	Prescriptive right... ..	71
Pardanashin Ladies	71	Presidency Small Cause Court	71
Pardanashin Succession Act	71	—Courts Act	71
Pardanashin	71	Presumption	71
Pardanashin	71	Primogeniture	71
Pardanashin	71	—Sana	71
Partition	731	Principal and Agent	71
—Act	732		

Printing Presses Act	772	Registration of Societies Act... ..	794
Priority	"	Regulation III of 1798 (Bengal)	"
Privy Council	"	—VIII of 1798 (Bengal)	"
Probate	778	—XI of 1798 (Bengal)	"
— and Administration Act	774	—II of 1805	"
Procedure	"	—XVII of 1806 (Bengal)	"
Proclamation	775	—V of 1812 (Bengal)... ..	795
Profits... ..	"	—II of 1819	"
Promissory note	"	—VIII of 1819 (Patni)	"
Proofs... ..	778	—VII of 1822 (Bengal)	798
Property	"	—XI of 1825 (Bengal)	"
Proprietary right	"	—III of 1872 (Sonthal Purgun-	
Prosecution	"	nahs Usury Laws)	799
Prostitute	"	—I of 1886 (Assam Land Revenue) ..	"
Protection of Judicial Officers Act	"	—II of 1827 (Bombay)	"
Provincial Small Cause Court	"	—XXV of 1802 (Madras)	"
Proxy	"	—V of 1804 (Madras)	800
Public Demands Recovery Act (Bengal)... ..	"	—VII of 1817 (Madras)	"
—Duties	"	—XVII of 1806 (Punjab)	"
—Policy	"	Relief	"
—Trusts	779	Religious Association	"
Puisne Mortgages... ..	"	Religious Endowments	"
Punjab Alienation of Land Act	"	Religious Endowments Act	803
—Courts Act	"	Remand	"
—Excise Act	"	Rent	804
—General Clauses Act	"	Rent Act (N. W. P).	805
—Land Revenue Act	"	Rent Act (Oudh)	"
—Laws Act	"	Rent Court	"
—Limitation Act	"	Rent Recovery Act (Madras)... ..	806
—Loans Limitation Act... ..	"	Rent Suit	"
—Tenancy Act	"	Representatives	"
Purbia Kurmis	"	Re-sale	"
Purchase-money	"	Residue	"
Purchaser	"	Res judicata	"
Putni lease	780	Restitution	824
Question of Fact	"	Restitution of Conjugal Rights	825
Quorum	"	Resulting Trusts... ..	"
Railway Company... ..	"	Resumption	"
Railways Act (IX of 1890)	"	Revenue Authorities	827
Ratification	"	Revenue Court	"
Reasonable and probable cause	"	Revenue Courts (N. W. P).	"
Receiver	"	Revenue Records... ..	"
Recital	"	Revenue Recovery Act (Madras)	"
Record of rights	"	Revenue Sale	"
Record of suit	"	Revenue Sale Law (Bengal)	"
Rectification	781	Reversioners	"
— of Instrument	"	Review	"
Re-entry	"	Revision	828
Reference	"	Revocation	830
Refund	"	Right of occupancy	831
Registrar	"	Right of suit	"
Registration	"	Riparian Owners... ..	839
— Act (III of 1877)	784	Riparian Proprietors	"
— Regulation (Travancore)	784	Riparian Rights... ..	840

River...	840	Sonthal Pergannas	855
River Action	"	Sorcery...	"
Rotar Accounts...	"	Sovereign Powers...	"
Roman Catholic Christians...	"	Sovereign Prince...	856
River bed	841	Specific Performance	"
Rule of double portions	"	Specific Relief Act (I of 1877)...	859
Rules of the Bombay High Court	"	Spas Successionis	864
Calcutta High Court	"	Stamp...	865
the N W P High Court	"	Stamp Act (II of 1899)	"
Ryotwari Tenure	"	Standing Crops	868
Sale	"	Standing Orders of Board of Revenue	"
Sale certificate	842	(Madras)	"
in auction	"	State	"
in execution	843	Statutes 18, Eliz., Ch. 5	"
of decrees	844	Statutes 11 and 12, Vic., Ch. 21, S. 2	869
Sale for arrears of revenue	"	Statutes 29 and 33, Vic., Ch. 4	"
of Goods	"	Statutes 24 and 25, Vic.	"
Proclamation	"	Statutes 41 and 42, Vic., Ch. 42	"
Sanction	"	Statutes 44 Vic., Ch. 12, S. 87	"
Saranjam lands	"	Stay of execution	"
Sea Customs Act	"	Step in aid of execution	"
Second appeal	"	Stolen Currency Note	870
Secondary Evidence	"	Sub-mortgages	"
Secretary of State	"	Subordinate Courts	"
Security	845	Sub-Settlement Act (Oudh)	"
Security-bond	"	Sub-soil	"
Service of process	"	Subsoil Rights	"
Service Tenures	846	Substituted service	"
Set-off	848	Succession	"
Settlement	"	Succession Act (Indian)	"
Settlement award	"	Succession Certificate Act	"
Settlement officer	"	Suit	"
Shamlat land	"	Suit in ejectment	"
Sham Transaction	849	Suits Valuation Act	"
Shares	"	Summons	"
Shebait	850	Surety	871
Sheiks of Mulana	"	Tacking	"
Ship	"	Tarwad	"
Shops	"	Tawazhi	872
Signature	"	Taxation	"
Sir land	"	Temple Committee	"
Slander	"	Tenancy	"
Slander of Title	"	Act (Agra)	"
Small Causes Court	"	Act (Bengal)	"
Small Causes Court (Mofussil)	851	Act (Central Provinces)	"
Small Cause Courts (Presidency)	"	Act (N. W. P.)	874
Small Cause Courts (Presidency towns)	"	Act (Punjab)...	"
Small Cause Courts Act XV of 1892	"	in Common	"
(Presidency)	"	Tenants (occupancy)	"
Small Cause Courts, Provincial Act (IX	"	Tenure of Groves	"
of 1897)	"	Tenures	"
Small Cause Suit	855	Testamentary Guardian	"
Societies Registration Act	856	Thak Map	"
Solicitor's lien	"	Title	"

TABLE OF HEADINGS AND SUB-HEADINGS, IN THIS PART.

OKKJ

Torts ...	...	...	575	Vendor and Vendee	...	...	934
Track Rent	...	...	"	Verification...	...	...	"
Trade ..	...	...	"	Vice Chairman of Municipality	...	...	"
Trade Mark	...	...	"	Viciniage ..	...	...	"
Traint...	...	...	577	Village ...	...	...	"
Tramway Company	...	...	"	Village Abadi	...	...	"
Transfer	...	...	"	Village Chowkidar's Act [VI of 1870, (B.C.)	...	...	"
Transfer of case ...	...	...	578	Village Officers	...	...	"
Transfer of Property Act (IV of 1882)	...	...	"	Voluntary payments	...	...	"
Treaty...	...	...	927	Vysahar Mayukh ...	...	...	"
Trees ..	...	...	"	Wagering Contract...	...	...	"
Trespasser	...	...	"	Waiver	...	...	"
Trust ...	...	...	"	Wajib-al-arz	...	...	935
Trust Act (II of 1892)	...	...	929	Wajib-al-arz (Nagpur)	...	...	937
Trustee	...	...	"	Wakf	...	...	"
—(Female)	...	...	"	Wakfnamah	...	...	"
Trustees	...	...	"	Waste land ..	...	...	"
Trustees (additional)	...	...	"	Water	...	...	"
Trustee and Custodi que Trust...	...	...	"	Water-course	...	...	"
Trusteeship	...	...	"	Wells	...	...	"
Trust Property	...	...	"	Widow	...	...	"
Unclaimed Deposits Act	...	...	"	Widow Remarriage Act	...	...	"
Under-proprietory Right	...	...	"	Will	...	...	938
Undue influence	...	...	"	Withdrawal of suit	...	...	943
Universal legatee	...	...	930	Witness	...	...	"
Upper Burma Civil Courts Regulation	...	...	"	Words	...	...	944
Upper Burma Land and Revenue Regulation	...	...	"	Written Statement	...	...	"
Urban areas	...	...	"	Yearly Tenancy	...	...	"
Valuable consideration	...	...	"	Zanzibar Orders in Council, 1884 and 1897	...	...	"
Valuation of appeal	...	...	"	Zemindar and ryot	...	...	"
—land...	...	...	931	Zemindaritenant	...	...	"
—suit	...	...	"	Zerai or Kamat lands	...	...	"
Vendee	...	...	932	Zurpeshgidar	...	...	"
Vendor	...	...	"	Zurpeshgi lease	...	...	"
—and Purchaser	...	...	"		

THE CURRENT INDEX.

OF

INDIAN CASES, 1906.

PART IV

SECTION II (CIVIL CASES.)

Abadi.

(1) Land in the city of Lucknow obtained by Nuzal under a settlement decree, renunciation of right of Government, as to—See LORD JANNING'S PROCLAMATION OF 1858, No. 1, 9 O.C. 249.

(2) Tenant's building a house in village and occupying it for over twelve years, whether, will constitute adverse possession—See ADVERSE POSSESSION, No. 6, 3 A.L.J. 627.

* See, also, *I, Landlord & Tenant*, Nos. 21, 29, & 40.

Village Abadi, No. 1.

Abandonment.

(1) Mortgage of occupancy right, does not constitute—See LANDLORD and TENANT, No. 9, 86 P.L.R. 1906.

(2)—of holding by tenant entitling landlord to treat the transferee from tenant as a trespasser—See LANDLORD and TENANT, No. 14, 10 C. W. N. 1088.

Abatement.

(1)—of rent—A suit by a patnidar for a declaration that he was entitled to an annual of rent and for refund of excess rents he had been compelled to pay for some years is a suit for—of rent within the meaning of S. 28 of Act X of 1850 (BENGAL)—See ACT X of 1850 (BENGAL), No. 2, 3 C.L.J. 148.

(2) A suit for adjustment of rent on the ground that the rent payable under a lease is less than the sum nominally inserted in it is

Abatement.—(Concluded).

not a suit for—of rent. Such a suit is maintainable in a Civil Court. See ACT X of 1850 (BENGAL), No. 2, 3 C.L.J. 148.

(3) Order for—of suit not a decree but an order under S. 307, C. P. C., appealable as such under S. 588 (18) of the Code—See CIV. PRO. CODE, No. 214, 2 N.L.R. 7.

(4)—of suit by husband for dissolution of marriage—Death of wife pending suit—Suit against co-respondent, abatement of—See HUSBAND and WIFE, No. 1, 60 P.R. 1906.

(5) Joint and several liability of defendants—Death of one of the defendants, whether suit abates on—See CIV. PRO. CODE, No. 215, 33 C. 590.

(6) Order of—of suit, whether appeal lies against an—See CIV. PRO. CODE (TRAVANCORE), No. 7, 21 T. L. R. 191.

See, also, *I, Civil Pro. Code*, Nos. 222, 223, 254.

Custom (Punjab), No. 7.

Act XII of 1855, No. 1.

Abwab.

(1) Road-cess not an—See ACT IX of 1880 (BENGAL CESS), No. 2, 3 C.L.J. 337.

(2) Road-cess is not—See ACT VIII of 1885 (BENGAL TENANCY), No. 27, 3 C.L.J. 391.

(3) Poor's expenses realized from tenant in addition to rent is—See ACT VIII of 1885 (BENGAL TENANCY), No. 27, 3 C.L.J. 391.

Abwab.—(Concluded).

(4) Stipulation to pay the price of three coco-nuts and render one day's personal service, over and above rent, whether enforceable—See ACT VIII of 1885 (BENGAL TENANTY), No. 2, 10 C.W.N. 527.

Accounts.

Suit by surviving partner against heirs of deceased partner for their share of losses incurred by the partnership—Limitation—See LIMITATION ACT, No. 36, 78 P.L.R. 1900.

See, also, I. 2, Nos. 4 and 5, *Contract Act*, No. 12; *Limitation*, No. 1; *Nonjander of parties*, No. 4; *Mortgage (Accounts)*, No. 1; *Partnership*, No. 1; *Limitation Act*, No. 79; *Practices (Misc. Cases)*, No. 19 and *Small Cause Courts Act (Provincial)*, No. 12.

Account-books.

See I. *Evidence Act*, No. 9 and *Civil Pro. Code*, No. 91.

Accretion.

(1) *Reformation—Taraf—Evidence—Maps—Description in plaint—Administrative divisions—points not raised in the first Court—Partition—Title.*

The word "*Taraf*" appears to mean a subdivision of a *pargunnah*, including several villages.

In 1868, two suits were brought by the predecessors in interest of the present plaintiffs to recover the respective shares now claimed by them in the *chur* which is also the subject-matter of present litigation. A map of the disputed lands was prepared by an Amin and was made part of the decrees passed in the said suits.

Held, that the proceedings in the suits of 1868 and the Amin's map were not evidence against the Government, which was not a party to the said suits, except for the purpose of showing the nature of the claim made and what lands were recovered by them and explaining the decrees made. For that purpose, the map might, legitimately, and must, necessarily, be used.

Held, further, that the decision come to in the suits of 1868 was in accordance with the construction then put by the Indian Courts on Regulation XI of 1825. That view of the law was, however, overruled by a Full Bench of the Calcutta High Court in *Budurminissa Chowdhra v. Proanno Kumar Bose* (a) and the

Accretion.—(Continued).

law on the subject has been settled by that case, and the case of *Ellak v. Muddan Thakoor* (b) decided by the Judicial Committee in the same year.

The allegation in the plaint that the disputed lands appertain to a particular district is merely descriptive and is not restrictive. Where the plaintiff claimed the lands in dispute as reformation *in situ* of her diluviated and permanently settled estate (*Pargunnah Luskurpur*) and succeeded in proving that the said lands were on the original site of the said estate, as it existed at the time of the Permanent Settlement, and the High Court considered that this was not sufficient to entitle her to obtain a decree, because the *pargunnah* was partitioned in 1899 and different *mouzas* or parts of *mouzas* fell to the shares of the different co-sharers and accordingly, the parties went to trial, not upon the broad issue, whether the disputed lands were reformations on the original site of the *pargunnah* but upon the narrower issue, whether they were reformations on the original site of certain specified *tarafs*; and it lay upon the plaintiff to make out affirmative of that issue.

Held, reversing the decision of the High Court, that the failure of the plaintiff to identify the sites of these *tarafs* should not be regarded as fatal to her case. The defendant, in his written statement, did not traverse the allegation of the plaintiff's title to be a co-sharer of the estate and did not mention the alleged partition, and no issue was directed either to the plaintiff's title or to the partition. The plaintiff should be treated as having a *prima facie* title as co-sharer in every part of the permanently settled estate of *Luskurpur*, which was not shown to have been alienated and no weight should be attached to a suggestion not made in the Court of the first instance, where it might have been explained and met by evidence. *Neel Hemanta Kumari Debi v. The Secretary of State for India in Council and Sri Sundar Debi v. The Secretary of State for India in Council*, 3 C. L. J. 500 (R.C.)—1 M. L. T. 175.

LORD DAVEY, SIR EDWIN HUNTER, SIR J. DREW SCOTCH and SIR JAMES WILSON.

References.—(a) 5 B. L. R. 205, 2. (b) 5 B. L. R. 521, R.

(2) *Alluvion from river, and land formed on right of the owner of adjoining bank* (a).

DIGEST OF CASES.

Accretion.—(Concluded).

Where land was formed by alluvion from a river on the bank opposite to that on which plaintiffs held land (i.e., on the side of the river on which the defendant's lands lay) and such land was "new land and not merely old land re-appearing" and the lower Courts had decided against the plaintiffs, dismissing their suits based on the allegation that the accretions were really old village land which had been submerged in water and that they were, therefore, entitled to it; *Held*, on second appeal, confirming the decisions of the lower Courts, that the case was governed by the principle that where there is an acquisition of land from the sea or a river by gradual, slow and imperceptible means, such accretion by alluvion is to be held to belong to the owner of the adjoining land (a). **Kasakurti and Yaka-Nara Reddy v. Pooloori Sreeramulu**, 1 M. L. T. 101.

WHEAT, C. J. and BENSON, J.

References.—(a) 22 M. 464, F., 13 M. I. A. 467 and 27 C. 768, D.

(3) Gradual—See ALLUVION, No. 2, 3 A.L.J. 458.

(4) Right of ryot having no pre-existing right to land, to later—to such land—See ACT VIII of 1885 (BENGAL TENANCY), No. 9, 33 C. 444.

(5) Property purchased by a Mahomedan widow out of income of property of her husband in her possession in lieu of her dower—Whether such property forms part of the husband's estate—See MAHOMEDAN LAW (DOWER), No. 1, 3 C. L. J. 541.

See, also, I, 4.

Accrual of right to sue.

See, I, Act III of 1899 (Bengal), No. 1.

Acknowledgment.

(1) *Korankas*—Construction of document—See COMPROMISE ACT, No. 13, 23 P.L.B. 1906.

(2) Whether the law of limitation is saved by—of original debt by a forged bond—See ALTERNATIVE, No. 2, 4 C.L.J. 383.

(3) Applicability of law relating to—to proceedings in execution of decree—See LIMITATION ACT, No. 22, 1 C.L.J. 381.

(4) Suit on acknowledgment—*Estoppel*—

Estoppel by acknowledgment

The plaintiff's claim (exclusive of interest) comprised Rs. 1000, and Rs. 479-1 as a balance struck in the plaintiff's account books. Rs. 1-2, and Rs. 42, subsequently repaid to the

Acknowledgment.—(Concluded).

defendants and Rs. 39 and Rs. 42, repayments to the plaintiff.

The lower Courts concurred in finding, on the evidence, that the first defendant, acting as the managing member of a joint Hindu family, had acknowledged and signed his name in the plaintiff's account book to the Rs. 479-1. The lower appellate Court however held that no suit could lie on the basis of a mere acknowledgment and disallowed this item giving a decree only for the Rs. 1-2 and Rs. 42.

Held, that the plaintiff was entitled to recover the whole amount claimed. **Bhola Nath v. Net Ram**, A.W.N. (1906), 185=3 A.L.J. 800.

STANLEY, C.J. and KNOX, J.

Reference.—33 A. 502, B.

(5)—of paternity—Legitimation—See MAHOMEDAN LAW (LEGITIMACY), No. 1, 9 C. U. 246.

(6) Requisites of an—to take a case out of the bar of limitation—See LIMITATION ACT, No. 27, 4 C. L. J. 94 (P.C.).

(7)—by Receiver, effect of, on limitation—See LIMITATION ACT, No. 28, 10 C. W. N. 959.

(8) Whether balance struck in Account Books will constitute—See LIMITATION ACT (XV of 1877), No. 31, A. W. N. (1906), 212.

(9)—by a person having no interest in property, when he made it, effect of—See LIMITATION ACT, No. 24, 3 A. L. J. 630.

(10)—of conditional liability, whether will give a fresh start of limitation. See LIMITATION ACT, No. 25, 1 M. L. T. 818.

See, also, I, Alteration, No. 1; Limitation Act (XV of 1877), Nos. 33 and 34; Res Judicata, No. 18.

Acquiescence.

(1) Acquiescence is quiescence under such circumstances as that assent may be reasonably inferred from it and is no more than an instance of the law of estoppel by words or by conduct; in other words, acquiescence does not mean simply an active, intelligent, consent, but may be implied, if a person is content not to oppose irregular acts which he knows are being done. **Amunda Chandra Sen v. Parbati Nath Sen**, 4 C.L.J. 398.

HARRISON and MOONJEE, JJ.

References.—(1889) 4 FILL. 117, (1888) L. R. 3 M.L. 246, (1890) 3 H.L. and T.W. 224, R., 39 C. A. 100, 27 C. 205, 34, and 7.

Acquiescence.—(Concluded).

(2)—in the institution of a suit in Court—See CIVIL PROCEDURE CODE, No. 81, 7 Dom. L. R. 289.

See, also, *I, Civil Pro. Code, No. 39 and Mortgage (Redemption), No. 17.*

Actionable claim.

(1) *Purchase of property to which adverse claims exist, legality of—Purchase merely for litigation illegal.*

Plaintiffs alleged that one T, with the authority of her late husband, adopted S, the first defendant in the suit, that they purchased from S, the plaint villages, which S had inherited from his adoptive father, and that they were resisted by other defendants in obtaining possession of the villages.

The defendants, other than S, pleaded that the plaint sale-deed was a champertous transaction, that no consideration passed for it and that the agreement itself was void, its object being to disturb the peace of the defendants' family and to promote gambling in litigation. Preliminary issues were framed as to whether the sale-deed represented a real and *bona fide* transaction, and whether the transaction evidenced by the sale-deed was of a champertous nature and, as such, opposed to public policy. On the evidence, the District Judge found that the purchase was speculative, that no consideration passed to S, and that the transaction was entered into mainly with a view to harass the defendants and, in the view that the entire transaction was a speculation in litigation rather than a *bona fide* purchase of an actionable claim, he dismissed the suit. *Held*, on appeal, reversing the decision—even if the recital in the sale-deed as to the consideration is a false recital and the transaction is one of a highly speculative character, it does not necessarily follow that the agreement would be an offence against the law of champerty or that its objects could be regarded as immoral or opposed to public policy.

The question in such cases is whether the real object of the transaction has been to acquire an interest in property for the purchaser or merely to speculate in litigation on the account either of the vendor and purchaser jointly or of the purchaser alone. It is not unlawful to purchase an interest in property though adverse claims exist which make litigation necessary for realizing the interest, but it is unlawful to purchase an interest merely for the purpose

Actionable claims.—(Concluded).

of litigation. In other words, the sale of an interest, to which a right to sue is incident, is good, but the sale of a mere right to sue is bad for champerty. The object of the law is not so much to prevent the purchase or assignment of a matter then in litigation as the purchase or assignment of a matter in litigation for the purpose of maintaining the action. *Deorao Gopalji Kunbi v. Sadashed*, 2 N.L.R. 17.

ISMAY, J. C.

References.—8 M. I. A. 170, 14 B. 72, 13 M. 874, 22 M. 810, 27 A. 271. *Refd. to.*

(2) Sale of a share in a law-suit—Sale of a doubtful right—Right of pre-emption—See ACT XVII OF 1876 (ODDH LAWS), No. 2, 9 O.C. 76.

(3) Whether an executory contract comes within the definition of an—within the meaning of S. 3 of the Transfer of Property Act—See TRANSFER OF PROPERTY ACT, No. 8, 10 C.W.N. 755.

Acts.

1. IMPERIAL ACTS.
2. BENGAL ACTS.
3. BOMBAY ACTS.
4. MADRAS ACTS.
5. NORTH WEST PROVINCES ACTS.
6. ODDH ACTS.
7. PUNJAB ACTS.
8. N.W.P. FRONTIER ACTS.

1.—Imperial Acts.**Act XXXII of 1839 (Interest).**

See *I, Act XX of 1839 (Bombay), No. 1.*

Act XIX of 1841.

(1)—*Ss. 1, 3, 4—Illegal possession of a deceased person's estate without any claim—Procedure under S. 3 of the Act on complaint regarding—Failure of Court to follow such procedure, effect of.*

To put the procedure provided by the above Act in motion, the title and *bona fides* of the applicant must be clear, and it must also be manifest that the party complained against had no lawful title to possession, and that, if the applicant were referred to a regular suit, he would be a serious sufferer. The more fact, however, that the Court, before issuing the citation under S. 4, omitted to follow such procedure and to satisfy itself, whether the party in possession had no title, would not so operate as

1.—Imperial Acts.—(Continued).

Act XIX of 1844.—(Continued).

to prevent a rectification of such procedure and to bar the Court from arriving, on the evidence, at a conclusion that the person in possession ought to be left undisturbed. *Rajji v. Lal Chand*, 188 P. B. 1906.

REID, C. J.

References:—6 W. R. (Mir.), 53 and 7 P. R. 1904, B.

(2) *Original jurisdiction under, vested in District Judge in Berar—High Court, competency of, to revise proceedings of the District Judge.*

The original jurisdiction created by the Act is now vested, in the case of Berar, in the District Judge. The words 'Suddar Diwani Adawlut' in the Act signify a High Court in British India, and it is clear that the Judicial Commissioner of the Hyderabad Assigned Districts, afterwards designated 'The Judicial Commissioner of Berar,' was duly invested with the powers given by the Act to a High Court in British India: (See S. 4 (8) of the Hyderabad Assigned District Courts Law, 1889). Finally, by S. 8 (1) of the Berar Courts Law, 1906, the entire jurisdiction of the Judicial Commissioner of Berar has been transferred to the Court of the Judicial Commissioner at Nagpur.

The High Court has no power of revision over the proceedings of the District Court under the Act, except as expressly provided by that Act. Though S. 622 of the Code of Civil Procedure has been modified in its application to Berar so as to remove the restrictions which have been placed by that section upon the revisional jurisdiction of the High Courts in British India, yet the modification must be so construed as to allow revision only in cases where it is not expressly forbidden by some other enactment. The order which S. 18 of the Act declares to be final is intended to be a legal order and so a totally illegal proceeding or order would always be subject to revision by the High Court. But where the District Court has exercised its power legally under the Act, then, however erroneous its procedure, or unjust or improper its order, the High Court has no power of revision.

The Act is designed to protect property: but it is only to be used where exceptional grounds for prompt action are necessary to guard against misappropriation, waste, or neglect of the estates of deceased persons. *Khaja Katbuddin v. Khaja Katbuddin*, 2 N. L. R. 72.

STANFORD, A. S. G.

1.—Imperial Acts.—(Continued).

Act XIX of 1844.—(Conold.)

(3) S. 8—See No. 1, *supra*.

(4) S. 4—See No. 1, *supra*.

Act XIX of 1843.

See REGISTRATION ACT (III OF 1877), No. 26, 8 A. L. J. 820 = A. W. N. (1906), 118.

Act XX of 1847 (Copyright).

(1) Ss. 6, 14—*Printing Presses and Newspaper Act (XXV of 1867), S. 18—Book of registry—Catalogue of books—Application to have a name expunged from such Catalogue—Assignee of proprietor of Copy-right—Infringement of copy-right—Supreme Court of Calcutta, jurisdiction of—High Court of Calcutta, jurisdiction of—High Court of Bombay, vesting of jurisdiction in—Judge of the Original Side, power of, to try the case—Charter Act (24 and 25 Vic. Ss. 9, 13, 14—Letters Patent, S. 36—Person aggrieved, meaning of—Affidavit evidence, if proper—Summary proceeding.*

S. 18 of Act XXV of 1867 has not ousted the jurisdiction of the Supreme Court of Calcutta, specially vested in it by S. 6 of Act XX of 1847, to entertain an application to have the name of a person, who has got his name registered in the Catalogue of Books at Bombay, in fraud of the applicant's rights, under the provisions of the Act, expunged from such Catalogue; nor has it vested such jurisdiction in the High Court of Bombay.

A Judge of the High Court, appointed by the Chief Justice of the Court, under S. 14 of the Charter Act (24 and 25 Vic.) to take the work of Original Side of the Court, has, having regard to Ss. 9, 13 and 14 of that Act, and to S. 26 of the Letters Patent, jurisdiction to try the case.

A proprietor of the Copyright of Books is 'a person aggrieved,' within the meaning of S. 6 of Act XX of 1847, when he finds that another person has got his name registered in the Catalogue of Books at Bombay in fraud of his rights.

The summary proceeding mentioned in S. 14 of Act XX of 1847 means the summary proceeding mentioned in S. 6 of the Act. A proprietor of the Copyright of Books, whose name has not been entered in the Book of Registry at the Office of the Secretary of the Home Department of India at the time the proceeding is commenced, is precluded by S. 14 of the Act from maintaining an application to have the

1.—Imperial Acts.—(Continued).

Act XX of 1847 (Copyright).—(Contd.).

name of a person expunged from the Catalogue of Books at Bombay, the proceeding being one in respect of an infringement.

Per SALL, J.—The High Court, in its Original jurisdiction, is the successor, in the direct line of descent, of the Supreme Court and all the powers and functions of the Supreme Court now fail to be exercised by the Judge or Judges of the High Court, who are appointed by the Chief Justice to exercise the Original Jurisdiction of the Court. *Alibhai Sarafali v. Ismail Bin Shethk Badal*, 2 C.L.J. 511—10 C.W.N. 184—38 C. 571.

MACLEAN, C. J., SALL and HARRINGTON, JJ.

(N. B.) The above was an appeal from 9 C.W. N. 591—10 C. L. J. 278 under the name *Ismail Bin Shethk Badal v. Alibhai Sarafali*, to be found in I, Col. 5 & 6.

(3) S. 14 and Proviso—Necessity for registry under the Act, for the protection of copy-right.

Plaintiffs sued for damages and injunction on the allegation that defendant had infringed their copyright in a yearly calendar styled '*Sarva Mochoortha Panchangam*' by having printed and sold, on his own account, a similar calendar under the name '*Sarva Mochoortha Ganitha Panchangam*'. The defence put forward was that, in the case of a published book, there was no right to sue on account of piracy, except where the copyright had been registered under statutory provisions and the plaintiffs' almanac not having been so registered either under Act XX of 1847 or under Act XXV of 1857, they had no right to sue for protection of copyright therein. *Held*, the proviso in the Indian Act which does not, in substance, differ from that in the English Act (5 & 6 Vic., ch. 45, section 34) has the effect of protecting copyright in unpublished works as also copyright in the case of published work, where there has been registry under the Act and, in the absence of such registry, the plaintiff's suit ought to be dismissed. *Rahapathy Mudaliar v. Seetha-rasiah*, 29 M. 292.

SUBRAHMANYA AYTAR and BENSON, JJ.

References.—17 C. 361, *Distd.*

(3) S. 14—See No. 1, *supra*.

S. 12—See I, Act XX of 1847, No. 2.

Act XVIII of 1850 (Protection of Judicial Officers).

(1) Judicial Officer's privileges—Acts done in the discharge of duty—Acts done within

1.—Imperial Acts.—(Continued).

Act XVIII of 1850 (Protection of Judicial Officers).—(Contd.).

the limits of his jurisdiction.—Jurisdiction, meaning of.—Protection, a matter of public policy—Abuse of the protection—C. P. Code, S. 129—Judgment, pronouncement of—

To secure the protection of Act XVIII of 1850, the defendant must show :—

(1) That the act complained of was done or ordered by him in the discharge of his judicial duty ; and

(2) That it was within the limits of his jurisdiction or, if not within those limits, that he, at the time, in good faith believed, himself to have jurisdiction to do or order the acts complained of.

Jurisdiction mentioned above rests, not on the proof adduced in support of the charge, but on the nature of the charge actually made.

The protection afforded to judicial officers rests on public policy. And though, thereby, a malicious Judge or Magistrate may gain a protection designed, not for him, but in the public interest, it happily does not follow that he can exercise his malice with impunity. His conduct can be investigated elsewhere and due punishment awarded.

A judgment was written by a Judge, after he was transferred from the District, and it was pronounced by his successor.

Held, that S. 129 of the Code afforded a complete answer to the objection that the judgment was illegal.

Per JENKINS, C. J.—“ We earnestly hope that those judicial officers, whose official movement may leave them open to this charge (that is, of wilfully compelling the defendant to follow the movements of his enemy) will strive to exercise their power with such consideration for those, who appear before them, as will secure them from any imputation of misconduct in this respect.” *Chitambar v. Bhatnagar*, 7 Bom. L. R. 261—38 S. 241.

JENKINS, C. J. and BARRY, J.

Act XXI of 1850 (Guardianship of Minors).

(1) Act VIII of 1857, S. 12—Hindu Code—Guardian and minor—Hindu Code—Mother to be guardian of her infant daughter.

In the absence of any special reason to the contrary, a Hindu mother has a natural right to the guardianship of her infant daughter, and this

1.—Imperial Acts. —(Continued).

Act XXI of 1885 (Caste Disabilities Remedy). —(Contd.)

right is not taken away by the fact that the mother has been outcasted. *Kanleera v. Jeral Kasandhan*, A.W.N. (1906), 205 = 2 A.L.J. L. 663 = 26 A. 233.

Knox, J.

Reference:—1 A. 539, F.

See, also, *J. Hindu Law (Inheritance)*, No. 4.

Act XII of 1885 (The Legal Representatives Suits).

Sec. 1, 2.

Act XIII of 1885 (Fatal Accidents).

Sec. 1, 2.

Act XV of 1886 (Widow Re-marriage).

(1) S. 2.—*Hindu Law—widow re-marriage—Forfeiture of interest in the estate of first husband—Transferees from a person not entitled to transfer—right of.*

A Hindu widow, belonging to Khasodhan caste, in which there is no obstacle, by law or custom, against the re-marriage of widows, does not, by marrying again, forfeit her interest in the property left by her first husband (a).

Where a person died leaving a mother and a widow who remarried, and the widow transferred her interest in her first husband's property to the plaintiff, and the mother sold the same property on the same day to some of the defendants who, in order to pay up the debt contracted by the deceased, mortgaged the property to other defendants. *held*, that the widow did not forfeit her right on account of re-marriage. *Held*, further, that the plaintiff was not bound by the arrangement entered into by defendants, although the money was borrowed to pay up the debts of the deceased, and that the plaintiff was entitled to recover possession of property from the defendants. If the defendants have any just claim as against him, in respect of debt, which they had paid off, it is open to them to institute a suit for that purpose. *Kanleera v. Jeral Kasandhan*, 3 A.L.J. 729 = A.W.N. (1906), 209.

STANLEY, C.J. & HORTON, J.

Reference:—1 A.L.J. 235, A.W.N. (1906), 78 and 80 A. 439, 2.

See, also, *J. Hindu Law (Widow)*, No. 24.

Act XXXV of 1879 (Lunatic).

(1) S. 2 & 3.—*Meaning of "lunatic"—Duty of Court to inquire whether lunatic has property.*

1.—Imperial Acts. —(Continued).

Act XXXV of 1879 (Lunatic). —(Continued).

—*Court of Wards Act (IX of 1879), S. 6, cl. (c) and (d).*

A lunatic, within the meaning of S. 28 of the Act, must be incapable of managing his own affairs, and must also be of unsound mind (g). Mere weakness of intellect is not unsoundness of mind within the meaning of that section.

Where, therefore, a person is found to be only of a weak intellect, the Civil Court cannot proceed under this Act, although the person may, from such weakness of intellect, be incapable of managing his own affairs.

It is open to the petitioners in such a case to move the Court of Wards under Act IX of 1879 (B.C.) *Masahpruddin Khan v. Sarajuddin Khan*, 4 C.I.J. 115.

GROSS and MITRA, JJ.

Reference:—(a) 24 W.R. 124, B. and Appr.

(2) Ss. 2, 29—meaning of "relative" in S. 3.—*Inquiry into the matter of the lunacy, application for, who could make—Order passed by District Judge, appeal from.*

The applicant-respondent, in this case, admitted in his application that he was not related to Rahman whom he alleged to be a lunatic, and there was no allegation that the applicant possessed any other status such as was described in S. 8 of the Act. The applicant was, therefore, held not competent to apply to the District Judge to make an enquiry into the alleged lunacy of Rahman. Also, overruling the contention for respondent by his counsel that the respondent and the alleged lunatic were members of the same tribe, and that the term "relative" in S. 8 was wide enough to include such cases, it was held that a member of the same tribe is not a 'relative' within the meaning of S. 8.

Held, also, that appeal from the order of the District Judge, in this case, lay to the Chief Court as the property involved was found to exceed Rs. 5,000, in value (a). *Mahammad Yar v. Haki Baksh*, 34 P.R. 1906.

LAL CHAND, J.

Reference:—(a) 33 P.R. 1907, B.

(3) Ss. 2, 9 and 10, application under, Serial by counter-petitioner of lunatic's possessing property—Duty of Court to inquire whether lunatic has property.

1.—*Imperial Acts.*—(Continued).

Act XXXV of 1898 (Lunatics).—(Concl'd.)

As a pro-requisite to the Court's taking action on an application under the Act, it is necessary that the Court should be satisfied that the alleged lunatic has property. But, on the mere denial, by counter-petitioner, of the possession of any property by the lunatic, the Court is not justified in summarily dismissing the petition. In such a case, it must proceed to enquire whether or not the lunatic has property and to decide whether further action in the matter is necessary or not and then proceed to take or stop further action as the case may be. **Lakshmi Ammal v. Seerangathammal**, 20 M. 810.

BENSON and MOORE, JJ.

(4) S. 9—See No. 3, *supra*.

(5) S. 10—See No. 3, *supra*.

(6) S. 14—Powers of guardian to contract to sell—payment of earnest-money before sale—damages.

Where the guardian of a lunatic entered into an agreement with plaintiff to sell the lunatic's property and received earnest-money, pending an application before the District Judge to sell, and the District Judge refused permission, held that the plaintiff was not entitled to any damages for breach of contract, inasmuch as the guardian was not competent to enter into any valid contract, but he was entitled to recover the money paid by him to the guardian. **Ramdin v. Muhammad Ikram-Ud-Din**, 3 A. L. J. 636=A.W.N. (1906), 298.

STANLEY, C.J., and RUSTOMJEE, J.

(7) S. 22—See No. 2, *supra*.

(8) S. 23—See No. 1, *supra*.

(9) Person not adjudged lunatic under, right of, to use by next friend—See CIV. PRO. CODE, No. 246, 3 L. B. R. 169.

See, also, I, 11 and 12 and Civil Pro. Code, No. 250.

Act XXI of 1860 (Societies Registration).

(1) S. 20—Charitable society—Religious society existing for the management of a public mosque.

A religious purpose may be a charitable purpose, and a society for religious purposes will ordinarily be a society for charitable purposes. Charitable purposes are not restricted to the giving of alms or other charitable reliefs, but the words have a much wider legal meaning (a).

1.—*Imperial Acts.*—(Continued).

Act XXI of 1860 (Societies Registration).—(Concl'd.)

Held, that the religious society, which had, for its object, the control and management of, and the protection of the property appertaining to, a certain public mosque, was a society which might legally be registered under the provisions of the Societies Registration Act, 1860. **Anjuman Islamia of Muttra, The v. Nasir-ud-din**, A.W.N. (1906), 59=3 A.L.J. 124=28 A. 384.

BAKERJEE and RICHARDS, JJ.

Reference.—(a) 2 Ch. 41, F.

Act XX of 1863 (Religious Endowments).

(1) Religious Endowments—Temple Committee—Power to dismiss the Moktesar of a temple—Onus of proof.

The plaintiff, a Moktesar of a temple, was dismissed by the Temple Committee constituted under the Religious Endowments Act, 1863, and was displaced in his appointment by others. He sued the Committee for a declaration that he was entitled to his office of Moktesar and that the appointment of the new Moktesars was illegal.

Held, decreeing the claim, that the powers of appointment and dismissal, with which the defendants as a Committee were vested, were exercisable not in their own interests, but in the interests and on behalf of the *Devasthan*, whereof they were trustees. They were, therefore, not at liberty to appoint or dismiss arbitrarily, capriciously or for private reasons of their own, but only on grounds justified by the interests of the institution. The appointment of the plaintiff by the Committee, therefore, implied that his tenure of office was to continue so long as its continuance was not inconsistent with the interests of the *Devasthan*.

Held, also, that the onus was on the plaintiff to show that the Committee had not, in dismissing him, acted on a *bona fide* belief that the dismissal was necessary in the interest of the *Devasthan*, but had been actuated by some other and improper motive. **Bhavanishanker Ramarao v. Timmanna Ram Shatta**, 8 Bom. L. R. 407=90 B. 508.

JENKINS, C. J. and BATTY, J.

(2) Permanent scheme by the Board of Revenue appointing hereditary trustees in a temple, Committee not competent to alter the—Whether Committee could appoint temporary additional trustees—Regulation VII of 1817, vesting in the Committee of the powers of the Board of Revenue under,

1.—Imperial Acts.—(Continued).

Act XX of 1863 (Religious Endowments). —(Continued).

The question in this case was as to the right of a temple-committee to appoint temporary, additional trustees for a temple, in respect of which a certain number of persons had been invested, originally, by the Board of Revenue with hereditary right to the trusteeship. On objection taken on behalf of the Committee (appellants), that it was not competent to the Board of Revenue to have introduced an hereditary element into the management of the temple, *held*, the case was one, in which it was competent to the Board, under S. 18 of Regulation VII of 1817, to make such provision for the trust management or superintendence as might, to them, seem right and fit, with reference to the nature and condition of the temple and that there was no necessary inconsistency between the exercise of such superintendence and the existence of hereditary trustees, whether appointed by the Board or otherwise (a). Having once made a certain scheme for the management of the temple, it was not open to the Board to revoke it and so it was not competent to the Board itself, much less to the Committee, to arbitrarily put an end to arrangements once permanently made. On the ground that the Committee had thus no power to alter, as they did, the construction of the temple management regularly established by the Board, it was laid down, following *Sheik Dayud Saiba v. Hussain Saiba* (b), that, where there is an hereditary trustee, it is not competent for a Committee to appoint additional trustees and that, to lay down that the Committee has an unqualified power of making such temporary appointments, it would give them a power liable to grave abuse (c). Further, such appointment not only does not necessarily add to the efficiency of the body but it has the effect of modifying the powers and responsibilities of the existing trustees. *K. S. Ganapathy Ayyar v. Sri Yedavyasa Alagasinga Bhagavathar*, 1 M.L.T. 127 = 16 M.L.J. 435.

SUBRAHMANIA AYYAR and BENSON, JJ.

References.—(a) 7 M.H.C. 77, F. 7 M. 499, Diss., (b) 17 M. 212, F. (c) 21 M. 179, F.

(8) S. 7—Rule 19—Payment of money to voters—Travelling allowances, cart-hire, etc.
—Bribery—Suit for a declaration that an election is invalid.

Plaintiff was elected as a member in a Devasthanam Committee, but the Committee, soon

1.—Imperial Acts.—(Continued).

Act XX of 1863 (Religious Endowments). —(Concl'd.)

after the election, cancelled the same, owing to certain alleged irregularities. He, therefore, brought this suit for a declaration that he was duly elected to the said Committee. The District Judge dismissed the suit. *Held*, on appeal, agreeing with the District Judge, that the appellant is not entitled to the declaration sought for, inasmuch as he was disqualified to be elected as a member of the Committee, with reference to Rule 19 framed under S. 7 of the Act. A candidate becomes disqualified, within the meaning of that Rule, if he had given money or other valuable consideration, "in return for" votes and as the result of a bargain with the voters that they should vote for him alone (a). In this case, admittedly, there were payments made by the appellant to the voters themselves as for "travelling allowances, cart-hire, etc.," for going to the polling place from various distances for the very purpose of voting for the appellant and for him alone. A previous understanding that their votes were to be for the appellant alone was clearly inferable from the evidence and the payment in the circumstances could hardly be treated as otherwise than in return for the votes.

Having regard to the reason for the provision in Rule 19, it was incumbent upon the candidate to furnish, with reference to his payments to voters, such information, if any, as could establish that those payments were not such as would render him liable to be declared disqualified within the meaning of that Rule. *N. Krishnaswami Iyengar v. Sivaswami Udayar*, 15 M.L.J. 449 = 29 M. 166.

SUBRAHMANIA AYYAR, OFFG. C. J., and BODDAM, J.

References.—(a) 6 H.L.C. 746, *Refd. to* : 31 L. T. 194, D.

(4) S. 14—See RELIGIOUS ENDOWMENTS, No. 1, 16 M.L.J. 150.

See, also, I., 12 to 14 & Religious Endowments Act (XX of 1863), No. 2.

Act XVI of 1864 (Registration).

See REGISTRATION ACT (III OF 1877), No. 26, 3 A.L.J. 320 = A.W.N. (1906), 113.

Act III of 1865 (Carriers).

See I, Contract Act, No. 14.

Act X of 1865 (Succession).

(1) Ss. 20, 22, 105—Relationships contemplated by the Act—Illegitimate children out-

1.—Imperial Acts.—(Continued).

Act X of 1865 (Succession).—(Continued).

side the scope of the Act—Gift of the residue to such charities as the trustees may think deserving.

The relationships contemplated by the Indian Succession Act, 1865, are only those flowing from lawful wedlock. Illegitimate children are outside the scope of the Act.

The gift, by a will, of the residue to "such charities as the trustees may think deserving" is a good gift, the object being wholly charitable. **Emma Agnes Smith v. Thomas Massey**, 8 Bom. L. R. 322=90 B. 500.

BATCHELOR, J.

(2) S. 22—See No. 1, *supra*.

(3) Ss. 25, 46—Difference between co-parcenership and inheritance.

The Act deals with the devolution of right on intestacy: it does not purport to enlarge the category of heritable property.

The Act does not affect rights of co-parcenership as between those to whom it applies (a).

The difference between co-parcenership and inheritance is radical. In the case of inheritance, property devolves on death; it survives in the case of co-parcenership; on inheritance, new rights are acquired, on survivorship, the enjoyment of existing rights is increased by the removal of one from the body of co-sharers. **Francis Ghosal v. Gabri Ghosal**, 8 Bom. L. R. 770.

JENKINS, C. J., and BEAMAN, J.

References:—(a) 10 M. 69, *Diss*; 9 M. I. A. 195, 14 W. R. 33 (P. C.), 12 C 706 (722), 23 B. 80, R.

(4) S. 46—See No. 3, *supra*.

(5) S. 51—Whether a deed poll previously executed by the testator and referred to in the will, but not for the purpose of making its contents a part of the will, requires probate—See **WILL**, No. 2, 9, C. W. N. 769 (P.C.).

Ss. 80, 98 & 106—See I, Act XXI of 1865 (Parsi Succession), No. 2.

(6) Ss. 82 & 111—Life estate—Estate of inheritance—Executory gift over.

A testator left an adopted son and gave authority to his widow to take three sons in adoption one after the death of another. The will contained a provision that the adopted son shall succeed to the estate on the death of the testator, and that, on the death of one adopted son and until the adoption of another son the,

1.—Imperial Acts.—(Continued).

Act X of 1865 (Succession).—(Continued).

estate shall remain in the ownership and possession of the widow as ordinary heir, the estate to vest in the adopted son immediately on adoption:

Held, that the adopted son would take not a life interest but an estate of inheritance, subject to a condition of defeasance.

Held, also, that the executory gift over did not take effect. **Manikyamala Bose v. Nanda Kumar Bose**, 4 C. L. J. 357.

MACLEAN, C. J., MOOKERJEE and HOLKWOOD, JJ.

References:—L.R.L.A. Sup. Vol. 47 and 23 I. A. 18, *Appl*.

(7) Ss. 96, 321—Wills executed by Hindus, interpretation of—Justice, equity and good conscience.

In interpreting a will executed by a Hindu, the lower appellate Court applied the provisions of S. 96 of the Act. *Held*, that, under S. 381 of the Succession Act, the provisions of the Act did not apply to wills executed by Hindus in Oudh. **Ram Kishan Singh v. Sripal**, 9 O. C. 159.

CHAMBER, J.C.

(8) S. 101—See **HINDU LAW (MANAGER)**, No. 1, 8 Bom. L. R. 268.

(9) S. 105—See No. 1, *supra*.

(10) S. 111—See No. 6, *supra*.

(11) Ss. 111 and 116.

The principle well established by *Jones v. Westcomb* (a) and various other English cases has been codified in India in S. 116 of the Indian Succession Act (X of 1865) which section applies to Hindus (a).

S. 111 of the Succession Act applies only when the prior request is capable of taking effect and is not *ab initio* void. If the bequest has failed *ab initio*, the principle laid down in S. 116 applies.

The rule, which has been applied to a bequest in a Will executed before the 1st September, 1870, of immovable property by a husband to his wife, *vis.*, that she takes only a limited estate, when there are no express words creating an absolute estate, cannot apply to a married daughter. Though under Hindu law, a married daughter takes, by inheritance, a limited estate, she takes an absolute estate under a devise by will, unless her interest is curtailed by express words or necessary implication (b).

1.—Imperial Acts.—(Continued).**Act X of 1885 (Succession).—(Continued).**

The words in the Will, "to my daughters and their respective sons I give, devise and bequeath the same," give an absolute estate to the daughters, and not a limited or joint estate. 'Sons' in this case was intended to have the same effect as "sons, grandsons, etc."

Where it would be premature to decide whether an absolute gift is defeasible in the event of either daughter dying without male issue, the question was left undecided until it is ascertained what the events are (c). **Radha Prosad Mullick and Feary Lall Mullick v. Rani Moni Dassee**, 8 C. L. J. 502=10 C. W. N. 695 (S.B.) =33 C. 967.

MACLEAN, C. J., SALE, HARINGTON, MITRA and MOOREJEE, JJ.

References.—(a) 15 C. 282, F. (b) 16 M. 466, 24 C. 406, 24 W.R. 395, 24 C. 646, 2 C.L.J. 5. =9 C. W. N. 784, F. (c) 24 L. A. 76=24 C. 884, F.

(12) S. 116—See No. 11, *supra*.

(13) S. 159—See HINDU LAW (WILKS), No. 6, 3 C.L.J. 515.

Ss. 172, 187 and 260—See I, Act VIII of 1885 (Bengal Tenancy), No. 41.

Ss. 180 and 212—See I, 15.

(14) S. 187—Will—Application by legatee for Letters of Administration—Grant limited to recovery of legacy only—Suit by another legatee to recover legacy—Maintainability—Proof of will only essential.

Letters of administration with a copy of the will annexed in respect of the entire estate left by the testator was granted by the District Judge to a legatee to whom the testator had bequeathed an allowance for maintenance. On appeal, the High Court directed that the Letters should be limited to the realisation, by the grantee, of that allowance only. But, before fresh letters in terms of the High Court's order could be issued by the District Judge, the legatee died. Subsequently, another legatee to whom also the testator had bequeathed an allowance for maintenance, brought a suit for recovery of the same.

Held, that S. 187 of the Act was no bar to the recovery of the plaintiff's claim.

If a will is once proved and Probate or Letters of Administration granted, that would entitle any one of the legatees or any one claiming under the will to obtain relief from

1.—Imperial Acts.—(Continued).**Act X of 1885 (Succession).—(Continued).**

Court. S. 187 of the Act does not contemplate that every legatee claiming under a will should have to obtain separate Probate or Letters of Administration in respect of the estate or a portion of the estate in order to be entitled to maintain a claim for the legacy. **Kumar Chandra Kishore Roy v. Prosanna Kumar Das**, 10 C. W.N. 864=4 C. L. J. 523.

GHOSE, C. J. and CASPERSE, J.

(15) S. 256.

Per curiam—Under S. 256 of the Indian Succession Act, an administration bond should be given to the "Judge of the District Court." In the case of the High Court, such bond may be given in the name of the Chief Justice. Under S. 257, such a bond may be assigned to "some person, his executors, and administrators." The Administrator-General is such a person. This section is not confined to private individuals only.

In the case of the High Court, such a bond can only be assigned by the Court through one of its officers, e.g., the Registrar on the Original Side.

In making the preliminary order granting the Letters, the Court does not guarantee that the evidence upon which the order is made is true.

The grant of Letters, having been obtained fraudulently, was void *ab initio* (a).

The invalidity of the grant does not render the surety bond void.

Whether the shares sold by the administrator are or may be recoverable from the purchasers does not affect the liability of the sureties; since there is a present loss to estate, they are bound to make it good.

Per MITRA, J.—The grant being void *ab initio*, all acts done under it are also void (b).

The sale of shares was not in due course of administration (c).

Ss. 242 and 269 of the Indian Succession Act are not intended to afford protection to unwarrantable and fraudulent dispositions by an administrator, whose title rests on a grant absolutely void.

S. 232 affords protection to debtors making bona fide payments to an executor or administrator before revocation of the grant. But it does not protect purchasers. **Bahadur Nath Dutt v. The Administrator-General of Bengal** and **Banka Behari Banerji v. The Adminis-**

1.—*Imperial Acts.*—(Continued).

Act X of 1865 (Succession).—(Concluded).

trator-General of Bengal, 3 C.L.J. 422 (S.B.) = 10 C.W.N. 678 = 33 C. 713.

MACLEAN, C.J., HARRINGTON, STEPHEN, MITRA and GEIDT, JJ.

References.—(a) (1680) 2 Lev. Rep. 182 and (1905) 1 Ch. 613, R. (b) (1680) 2 Lev. Rep. 182, (1905) 1 Ch. 613, (1822) B and Ald. 744, (1884) 27 Ch. D. 220, and 6 C.W.N. 787, R. (c) (1560) Plowd. 276 and (1905) 1 Ch. 613, R.

Ss. 297 & 226—See I, 15.

(46) S. 321—See No. 7, *supra*.

Act XXI of 1865 (Parai Intestate Succession).

(1) *Parsees in the mofussil—Usage of the community—Practice of English Equity Court, how far applicable.*

Before the coming into operation of the Parsee Succession Act, 1865, the law governing the Parsees in the mofussil was the ascertained usage of the community, modified by the rules of equity and good conscience (a). In such cases the practice of the English Equity Court would, it is true, be followed with necessary modifications; but the reference to these Courts would be not for the purpose of introducing special or peculiar doctrines of English Law, but rather with the purpose of elucidating the principles of equity and good conscience and of giving systematic and uniform effect to them. **Shapufji Bezonji; Motivalla v. Dossabhoj Bensonji Motivalla**, 7 Bom. L. R. 988 = 30 B. 359.

BACHELOR, J.

References.—(a) 5 B. 506; 11 B. 1 (4); 5 H. C. R. 109, *Refd. to*.

See, also, I, 17.

Act XXV of 1866 (Unclaimed Deposits).

Application by a judgment-creditor for payment of money already realised in execution for him cannot be barred except under—See LIMITATION ACT, No. 125, 10 C. W. N. 354.

Act XXVII of 1866 (Trustees).

See I, 18.

Act XXX of 1867 (Printing Presses).

—See ACT XX OF 1847 (IMPERIAL) No. 1, 2, C.L.J. 511. and I, Act XX of 1847, No. 1.

* Act IV of 1869 (Divorce).

S. 3 (3)—See—I, 18.

* (1) S. 7—*Divorce—Marriage between Hindus—Converts—Nature of the marriage contemplated by the Act.*

1.—*Imperial Acts.*—(Continued).

Act IV of 1869 (Divorce).—(Concluded).

The marriages contemplated by the Indian Divorce Act, 1869, are, having regard to S. 7 of the Act, those founded on the Christian principle of a union of one man and one woman, to the exclusion of others, and, consequently, the Act does not contemplate relief in cases, when the parties have been married under the rites of Hindu law, a Hindu marriage not being a monogamous one. **Magania v. Premsingh**, 8 Bom. L. R. 856.

RUSSELL, C. J. BREMAN and HEATON, JJ.

Reference.—17 M. 235 (F. B.), F.

Ss. 17 & 57—I, 19.

(2) S. 20—*Marriage with an idiot, validity of.*

Among Christians, if a person is an idiot, at the time of the marriage, he or she is not capable of being bound by the transaction in any shape or form. **Paulappa v. Lea Hangal**, 8 Bom. L.R. 982.

RUSSELL, C. J., BREMAN and HEATON, JJ.

Act VII of 1870 (Court Fees.)

See COURT FEES ACT.

Act XXIII of 1871 (Pensions).

(1) S. 4—*Suit—Execution-proceedings—Dekhan Agriculturists' Relief Act (XVII of 1879), S. 44—Conciliation agreement, filing of—Decree of Civil Court—Partition of joint family estate—Charge on saranjam lands—Liability of the succeeding Saranjandar to pay the charge—Consent-decree setting aside of—Decree—Execution—Court executing the decree.*

The word 'suit' in S. 4 of the Pensions Act does not include execution-proceedings (a).

Two brothers, N and A, who owned *Saranjam* lands and other property, agreed, in 1882, on partition between them, that A was to pay every year Rs. 456-0-6 to N. It was agreed, for the convenience of the brothers, that the Rs. 456-0-6 were to come out of the *Saranjam* lands. The agreement was filed as a conciliation-agreement under S. 44 of the Dekhan Agriculturists' Relief Act; and it took effect as a decree passed by a Civil Court. The payment stipulated was made till 1899, at which time both N and A were dead: but after that, the payment was stopped. Thereupon, B, the son of N, filed a *darkhast* to enforce payment from T, the son of A. It was objected that, A's interest having terminated with his death, the *Saranjam* must be considered as a fresh grant to his son, and that the latter was

1.—Imperial Acts.—(Continued).

Act XXIII of 1871 (Pensions).—(Continued).

not bound by the decree and liable to continue the yearly payment.

Held, overruling the contention, that A was a trustee in respect of Rs. 456-0-6 for N, the obligation to pay which would attach to the succeeding holders of the *Saranjam* and that, therefore, N and his descendants would have the right to call upon A and his descendants to account for their management of the *Saranjam* and pay to them the Rs. 456-0-6 *per annum*.

Where a decree is arrived at by consent, it can only be set aside upon the same grounds as an agreement can be set aside, *e.g.*, fraud or mistake or misrepresentation (*b*).

Per BATTY, J.—A Court executing a decree cannot question the jurisdiction of the Court which passed it (*c*). **Trimbacrao Anandrao v. Balwantrao Narayanarao**, 7 Bom. L. R. 659 = 30 B. 101.

RUSSELL and BATTY, JJ.

References.—(*a*) 16 B. 731 and 1 B. 528, *Refd.* to. (*b*) (1885) 10 P. D. 165 and (1895) 1 Ch. 87 *Refd.* to. (*c*) 7 B. 481; 10 B. 65; and 22 B. 475, *Itfd.* to. 28 B. 378 = 6 Bom. L. R. 342, *Distd.*

See, also, I, Pensions Act, No. 1.

(2) S. 6—*Pension—Definition—Grant of rillage upon payment of a quit-rent—Construction of document.*

The common ancestor of the parties to a suit for partition of immovable property had obtained one of the villages, which were the subject of the suit, by grant from the Maharaja Scindhia in 1861. In 1866, this grant had been confirmed by the British Government by means of a *sanad*, which contained the following material provisions:—There was a declaration that the village in question shall be continued by the British Government to the grantee and his heirs inclusive of all lands, allowances and rights belonging to others, so long as he and his heirs shall continue loyal to the British Government and shall pay Rs. 800 to Government as quit-rent. The *sanad* further contained a guarantee against any further payment by the holder, on account of Imperial Land Revenue, beyond the amount specified, and a declaration that the village and its holder shall be liable for any local taxation, which may be imposed in the district generally. *Held*, that these provisions did not amount to a grant of land-revenue and the grant did not, therefore, fall within the

1.—Imperial Acts.—(Continued).

Act XXIII of 1871 (Pensions).—(Concl'd).

purview of the Pensions Act, 1871. **Ganpat Rao v. Ananda Rao**, A.W.N. (1905), 206 = 28 A. 104. STANLEY, C.J., and BANERJI, J.

Reference.—1 B. 528, *refd.* to.

(3) *Joghiri income, liability of, to attachment in execution—Cir. Pro. Code, S. 206—Interpretation of decree—Right of judgment-debtor to plead illegality of attachment of certain property when no objection was taken on previous occasions to attachment of the same property.*

An award of arbitrators directed the payment, by the defendant, of a certain sum of money, to the plaintiff and charge the same on a Jaghir income of the defendant. Judgment was given in terms of the award, but the decree, which followed, was silent as to the amount being charged on the Jaghir income. In execution, the Jaghir income was attached on some occasions and portions of the decree-amount were realised. On a subsequent attachment, the judgment-debtor pleaded the illegality of the attachment, on the ground (1) that the decree did not charge the decree-amount on the Jaghir income and (2) that the Jaghir income, being a pension within the meaning of the Pensions Act, 1871, was exempt from attachment. *Held*, (1) that, although the award and the judgment did charge the amount on the Jaghir income, the decree did not do so, the same not having embodied the terms of the award and the judgment. Such decree could not, merely because it purported to follow the judgment and the award, be interpreted as charging the amount on the Jaghir income. The Court, executing the decree, ought to give effect to it as it stands; and ought not to read into it provisions to be found in the award or in the judgment, unless and until an amendment of the decree is obtained under S. 206, C. P. Code; and (2) that the Jaghir income, being a pension within the meaning of the Pensions Act, was exempt from attachment. The mere fact that, on previous occasions, the judgment-debtor omitted to object to the attachment, could not debar him from objecting to the legality of the present attachment. **Muhammad Qamar-ud-Din Khan v. Lachmi Nath**, 95 P. R. 1906.

ROBERTSON and CHITTY, JJ.

References.—35 P.R. (1900), D. (b) 31 C. 322, D.

1.—Imperial Acts.—(Continued).

Act XXIII of 1874 (Pensions).—(Consolid).

- (4) S. 11—Pension—Water-advantage-rate, liability of, to attachment in execution—Decree—Interpretation of.

This case and 95 P. R. 1906 were connected cases and the facts of both were similar, with this difference, viz., that, in the present case, the property that was attached was *khush hais-i-yet* income i. e., water-advantage-rate. It was urged that this water-advantage-rate was not included in the original grant and was, consequently, attachable. *Held*, though the water-advantage-rate was not included in the original grant, it was a natural increment thereto, to which the grantee would be entitled on its coming into being. Thus it formed a part of the Jaghir income. In other respects, the judgment was the same as in 95 P. R. 1906, *supra*. **Qamar-ud-Din Khan v. Mani Ram**, 96 P. R. 1906.

ROBERTSON and CHITTY, JJ.

References.—95 P. R. 1900 and 95 P. R. 1906, R.

Act I of 1872—See under EVIDENCE ACT.

Act X of 1873 (Oaths).

- (1) Ss. 8 & 12—Agreement to abide by the oath of a person—Subsequent application to withdraw therefrom not allowed.

Where, in a suit, the parties put in a joint application evidencing an agreement to abide by the statement on oath of a certain person, but one of the parties thereto, subsequently, asked leave to withdraw from the reference on the ground of the collusion of that person with the other party and no collusion was proved; *held*, he could not be allowed to do so. **Chhiddu v. Kuar Sen**, 3 A. L. J. 654 = A. W. N. (1906), 290.

AIKMAN, J.

References.—4 A. 302, *Appr.*, & 18 A. 46 (49), R.

- (2) S. 11—Special oath—Binding effect—Conclusive evidence—See No. 3, *infra*.

- (3) S. 11—Special oath—Conclusive proof—Indian Evidence Act (1 of 1872), S. 4—Definition.

A statement by a witness, that a party is in possession is in point of law, admissible evidence of the fact that such party was in possession; and under S. 11 of the Oaths Act, 1873, it is conclusive proof of the matters stated.

1.—Imperial Acts.—(Continued).

Act X of 1873 (Oaths).—(Consolid).

The expression "conclusive proof" in S. 11 is to be understood in the sense in which it is defined by S. 4 of the Evidence Act, 1872. **Yithu Govinda v. Ramji Velluji**, 3 Bom. L. R. 19 = 1 M. L. T. 63.

JENKINS, C. J. RUSSELL, J.

Reference.—A. B. L. R. 97 (F. B.), F.

- (4) S. 1—Oath taken in a prior proceeding, effect of, as evidence in subsequent proceedings.

The point of law on which the appellant, in this case, relied was based on an oath, which had been taken by one of the parties in a previous proceeding, relating to the property in suit, under S. 144 of the Cr. Pro. Code, and the question was, whether that oath was conclusive in the present case, viz., one for the possession of the land. The lower appellate Court held that that oath was conclusive evidence against the plaintiff-appellant, not only in the prior proceedings in which it was taken but also in the present proceedings. *Held*, the oath is not binding as conclusive evidence in any proceeding other than that in which it was taken, there being nothing to indicate that it was intended that the oath should bind the person, at whose instance it was made, as being conclusive in any proceeding other than the one, which the parties had in their minds, when the challenge was given (a). **Badiad Din Ahmed v. Nizamuddin Haider**, 33 C. 386 = 10 C. W. N. 501.

HARRINGTON and PRATT, JJ.

References.—(a) 14 A. 141, F., 13 B. 399, R.

- (5) S. 12—See No. 1, *supra*.

Act II of 1874 (Administrator-General).

S. 17, Administrator-General's *interim* possession of the estate of testator without prior order of Court, legality of—See Act V of 1881 (Probate), No. 6, 10 C. W. N. 241.

Act XIV of 1874 (Scheduled Districts).

See I, 21.

Act IX of 1875 (Indian Majority).

- (1) S. 3—See Act VIII of 1890, No. 4, 4 C. L. J. 112.

- (2) S. 3—Grant of Letters of Administration to de facto guardian of a minor—Act VIII of 1890, Ss. 7 (1), 18—Declaration of guardianship.

The Court does not, by merely granting Letters of Administration, under S. 13 of Act V of

I.—Imperial Acts.—(Continued).**Act IX of 1875 (Indian Majority).—(Concluded).**

1881, to the *de facto* guardian of a minor, in respect of an estate, to which the minor is an heir, appoint or declare such guardian as a guardian to the person or property of the minor, within the meaning of S. 7 (1) of Act VIII of 1890. Such grant of Letters of Administration is not, therefore, sufficient to bring the minor under the provisions of S. 8 of Act IX of 1875. **Ganesh Lal v. Suraj Mal**, 89 P.R. 1906.

JOHNSTONE and LAL CHAND, JJ.

(8) *S. 3.—Guardian.—Appointment of guardian—Certificate of guardianship—Minority, period of—Act XX of 1864 (Bombay).*

For the purposes of S. 8 of the Majority Act, 1875, it is enough that a person has obtained an order for a certificate of guardianship of a minor, under Act XX of 1864; it is not necessary that any formal certificate in pursuance of such order should be obtained. A minor under such a guardianship must, therefore, be deemed to have attained his majority, when he shall have completed his age of twenty-one years. **Shivram Kondo Kulkarni v. Krishnabai Kashinath**, 8 Bom. L.R. 897.

ASTON and HEATON, JJ.

References:—5 Bom. L.R. 708, 19 B. 285 & 16 I. A. 195. R.

Act I of 1877—See under SPECIFIC RELIEF ACT (I OF 1877).

Act III of 1877—See under REGISTRATION ACT (III OF 1877).

Act XV of 1877—See under LIMITATION ACT (XV OF 1877).

Act VIII of 1878 (Sea Customs).

—See **TRADE-MARK**, No. 2, 4 C.L.J. 268.

Act XVIII of 1879 (Legal Practitioners).

(1) *Advocate and Pleader—Professional misconduct—ChamPERTY, agreement by way of—Relation of pleader and client.*

It is highly improper and grossly unprofessional conduct, on the part of an Advocate or of a Vakil, to enter into an agreement with a client, to furnish him with funds for a litigation, in consideration of his assigning over a part of the property in litigation, if recovered, to such Advocate or Vakil.

When a Vakil takes an active interest in a case during its pendency in the lower Court, and there is an understanding that he will be engaged as Vakil when the case comes up to

I.—Imperial Acts.—(Continued).

Act XVIII of 1879 (Legal Practitioners).—(Concluded).

the High Court, it cannot be said, that no relationship of pleader and client existed between himself and the client before the actual execution and acceptance of the *vakalatnama*. *In the matter of an Advocate, a Vakil, a Pleader and a Mukhtear*, 4 C. L. J. 262.

MACLEAN, C. J. and BANERJEE, ANNEER ALL, HILL and BRETT, JJ.

(2) *S. 13—Subordinate Courts, jurisdiction of—Enquiry into offences referred to in S. 13.*

A pleader was found guilty of tempting and inducing two subordinates of the Collector's Office, to act contrary to their duty, in allowing him to examine the treasury accounts. The Collector directed a Deputy Collector to charge him and to try the charge. *Held*, that the Deputy Collector was competent to adjudicate upon the charge. A Court subordinate to the High Court is competent to try offences falling under clauses (c to f) of S. 13 of the Act. *In the matter of Muhammad Abdul Hal, Pleader*, 2 A.L.J. 811=A.W.N. (1906), 268.

KNOX, J.

References:—15 C. 152 and 26 M. 449, R; 27 C. 1028, Diss.

(3) *S. 28—Agreement to pay full legal fee—Writing essential—Oral agreement void.*

The agent of the defendant made the plaintiff, a pleader, draft a plaint agreeing to engage him to conduct the case and to pay a full legal fee. The plaintiff drew up the plaint and handed it over to the agent, who filed it through another pleader. The plaintiff brought his suit for damages against the defendant.

Held, that the agreement was one respecting among other things, the amount of payment for service and was required to be reduced into writing signed and filed as provided by S. 28 of the Act and, not having been reduced into writing, it was invalid and unenforceable, and the suit should fail. (a). **Raghunath Saran Singh v. Sri Ram**, 8 A. L. J. 579 (F. B.)=A.W.N. (1906), 285=1 M.L.T. 242.

STANLEY, C. J., KNOX and RICHARDS, JJ.

References.—(a) 19 A. 186, 9 M. 375, 25 C. 505 and 37 M. 512, R.

See also, T. 31.

1.—Imperial Acts.—(Continued).

Act V of 1881 (Probate and Administration).

- (1) *Ss. 3 and 7—Executor by implication—Request to an idol—Right of shebait to take out probate.*

Where a testator had bequeathed the bulk of his estate for the *sheba* of a *thakur* and made certain other dispositions in regard to the rest of the property ;

held, on the construction of the will, that his wife, whom he had appointed *shebait*, having been confided with the execution of the will, was executor by implication, and as such entitled to take out probate of the will (a). **Kripamoyee Dassi v. Mohim Chandra Dutt**, 10 C.W.N. 232.

GHOSE and PARCITER, JJ.

Reference.—(a) 6 C. W. N. 310, *Refd. to*.

- (2) *S. 4—Person other than executor or administrator, when could sue for debts due to estate.*

Collusion between the administrator and the debtor is one of the cases, in which parties interested in an estate are allowed to sue both the administrator and the debtors of the estate, for the recovery of a debt due to the estate, such a case being considered an exception to the general rule under S. 4 of the Act. **Maung Bwa v. Ma Thi**, 3 L. B. R. 192.

FOX, C. J. AND IRWIN, J.

Reference. :—10 C. 713, *R*.

- (3) *Ss. 4, 12, 59, 88 and 90—See MAHOMEDAN LAW (WILL), No. 2, 9 C.W.N. 998 (P.G.).*

Ss. 6 & 7—See I, Act V of 1881, No. 1.

- (4) *S. 7—See No. 1, supra.*

- (6) *S. 12—See No. 2, supra.*

Ss. 30, 34 & 23—See I, 23.

- (6) *Ss. 31 and 32—Administrator-General's Act (II of 1874), S. 17—Administrator-General taking possession without prior order of Court—Conflict between Administrator-General and Court of Wards—Nominee of Court of Wards, if can be appointed Administrator—Zemindaries.*

The Court of Wards, as such, cannot be appointed Administrator. There is nothing, however, to prevent this Court, in certain circumstances, e.g., in this case, where the testator bequeathed the minor's estate to be entrusted to the Court of Wards, from appointing the nominee of the Court of Wards (in most instances the Manager) Administrator of the testator's

1.—Imperial Acts.—(Continued).

Act V of 1881 (Probate and Administration).—(Continued).

estate, with the will annexed, under S. 31 of the Probate and Administration Act.

Held, on the facts of this case, that the Administrator-General's taking possession of the estate of the testator was illegal. **Nrittya Gopal Biswas v. Administrator-General of Bengal**, 10 C. W. N. 241.

MACLEAN, C. J., and HARRINGTON and STEPHEN, JJ.

- (7) *S. 32—See No. 6, supra.*

- (8) *S. 45—Grant of effects unadministered—Long lapse of time—Presumption that estate has been administered—Property held as shebait, if part of estate.*

A testator died in 1884, leaving a will, whereby he appointed his widow executrix, and bequeathed the whole of his ancestral and self-acquired properties to her. The will contained a further direction that the widow shall perform the *sheba* of certain *thakurs*, of which the testator was a *shebait* and that, after her death, "he who may remain as my heir, as *shebait*, shall perform the *sheba* from the income of the estates of the *deb-sheba*." The widow took out probate in 1885 and died in 1902. Upon an application by the reversioner for Letters of Administration, the District Judge held that, as the last-mentioned direction in the will contemplated some administration after the death of the widow, the petitioner was entitled to take out Letters of Administration;

held, that the order of the District Judge was erroneous.

The Court may properly presume, in the absence of anything to the contrary and after this long lapse of time, that the estate has been administered.

The direction as to *sheba*, upon which the order was based, did not relate to the testator's own property. **Chandi Charan Mandal v. Banke Behari Mandal**, 10 C.W.N. 432.

MACLEAN, C.J. and GREIBT, J.

- (9) *S. 50—Revocation of Probate or Letters of Administration—Issues in such proceeding—Practice—Just cause—Hindu widow, order against, binds reversioner.*

Where an application was made for revocation of Letters of Administration, with the will of the deceased annexed, and it was prayed that the will should be proved before the applicant ;

1.—Imperial Acts.—(Continued).

Act V of 1881 (Probate and Administration).— (Continued).

held, that, until the applicant made out a case for revocation, the question of the genuineness of the will could be gone into.

English practice and practice of mofussil Courts in India distinguished ;

held, further, that a previous application for revocation by the widow of the deceased having failed, that decision bound a reversioner and the latter's application for revocation could not succeed except on proof that the previous proceeding had been collusive and fraudulent (*a*). **Durgagati Debi v. Sourabini Debi**, 10 C.W.N. 955 = 33 C. 1001.

BRETT and GUPTA, JJ.

References.—(*a*) 9 M. I. A. 539, 604 and 11 C. 186, *relied on*.

(10) S. 59—See No. 3, *supra*.

Ss. 69 and 71—See I, 23.

S. 78—See I, 24.

(11) Ss. 78 and 102—Expense in administering estate—Consideration to surety for the due administration is such expense within S. 102 and a first charge against the estate.

The point for decision in this case was, whether the estate of a deceased person was liable for the amount agreed to be paid as consideration to a person for his standing as surety for the due administration of the estate. *Held*, the consideration for inducing compliance with the Court's order, demanding security, must be included in the expenses of obtaining Letters of Administration within the purview of S. 102 of the Probate and Administration Act and must, therefore, be regarded as a first charge against the estate. The result of holding otherwise would be that, where security cannot be obtained gratis, Letters of Administration would not be granted and the estate might be wasted. **Imam Baksh v. Puran Mal**, 31 P. R. 1906 = 138 P. L. R. 1906.

RAID, J.

References.—1 P. R. 1869 (F.B.) and 31 C. 253, D., and L. R. 10 Ch. D. 816, *Appr*.

(12) S. 88—See No. 3, *supra*.

(13) S. 90—See No. 3, *supra*.

(14) S. 90—Executor—Restrictions imposed by will—Mortgage—Void—Voidable—Restitution—Beneficiaries, consent of.

R died in 1888, having previously executed a will, by which he directed that " if it became

1.—Imperial Acts.—(Continued).

Act V of 1881 (Probate and Administration).— (Continued).

necessary to borrow more than Rs. 1,000 or to alienate any property of a greater value, to grant any *pattah* for any greater amount, then it might be done with the consent of N, or failing him with the consent of D and the widows of the testator." During the time the widows were in possession as executrices, they executed a mortgage for Rs. 35,000 in favour of the plaintiffs, without the assent of N and without the leave of the Court. The probate granted to the widows, which was to last during the minority of one of the sons of the testator, was subsequently revoked and a fresh probate granted to that son. The mortgagees thereupon, instituted the present suit, which was dismissed by the Subordinate Judge, on the ground that the mortgage was not valid and binding on the estate, because it was not assented to by N, whose consent was, under the direction of the will, essential to the validity of the transaction. The plaintiffs, thereupon, appealed to the High Court.

Held, that N was neither an executor by implication nor a mere overseer, but was a person, whose assent, the testator intended, should be obtained to validate certain classes of transactions, as the testator had confidence in his judgment and integrity. It was open to the testator to impose restrictions upon the powers and discretion of an executor and if, in practice, such restrictions proved injurious to the actual administration of the estate, it was equally open to the executor to apply for suitable directions to the Court.

Held, also, upon a proper construction of S. 90 of the Probate and Administration Act, that the phrase " power to dispose " included any disposition by way of sale, mortgage, charge, exchange or lease and might also include a gift. As the executrices executed the mortgage in spite of the restriction in the will without the assent of N and without the leave of the Court, their act must be taken to be one in contravention of the provisions of clause 2, S. 90 of the said Act.

An executor has power to mortgage the property of the testator, unless prohibited by the terms of the will (*a*).

An alienation by an executor or administrator without leave of the Court, where such leave is necessary under S. 90 of the Probate and Administration Act, is not void but merely voidable (*b*).

1. — Imperial Acts. — (Continued).

Act V of 1881 (Probate and Administration). — (Continued).

No person, who is entitled to void a transaction ought to be allowed to do so, in such a manner as to enable him to recover property, which would otherwise be lost to him, and at the same to keep the money or other advantages which he has obtained under it (c).

The maxim that "he who seeks equity must do equity" is applicable to a defendant as well as to a plaintiff; and a party, who seeks to avail himself of an equitable defence, must stand the test as well as one who appears as plaintiff in a case (d).

If a mortgage is effected by an executor with the written consent of every beneficiary, it may fairly be regarded as in substance a mortgage by the beneficiaries themselves (e). **The Eastern Mortgage and Agency Co., Ltd. v. Rebatl Kumar Ray**, 3 C.L.J. 260.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 23 C. 908, 3 C. W. N. 482, 8 C. W. N. 362 and 16 Ch. D. 151, *F.*, and 3 C. W. N. 515, *Expl.* (b) 8 C. W. N. 54, *F.* (c) 23 M. 289, 25 A. 59, 15 B. L. R. 350, 9 A. 240, 24 C. 668, 18 A. 373, 29 C. 473, 30 C. 530, 26 A. 342, 9 W. R. 108, 11 B. L. R. 416, 8 M. 92, 5 B. 450, 2 C. 341, L. R. 7 Ex. 26, 7 App. Cas. 345 (860), 162 Ill. 232, 31 Am. Dec. 452, 30 Am. Dec. 174 and 29 Wis. 169, *Refd. to.* (d) 194 U. S. 530 (534), L. R. 2 H. L. 325, 3 App. Cas. 1218, (1277) L. R. 1. P. C. 219. (e) 140 N. Y. 304, and 151 N. Y. 204, *F.*

S. 90—See *I. Hindu Law (Joint Family)*, No. 7.

(15) *S. 92—Civil Procedure Code. S. 93—Execution of decree*—One of several joint decree-holders not competent to give a full discharge for the amount of the decree—*Executors.*

Held. that one out of several joint decree-holders is not competent to give a valid discharge for the amount of the joint decree, and his position in this respect is not affected by the fact that he and his fellow decree-holders are co-executors. **Lachman Das v. Chaturbhaj Das**, A.W.N. (1906), 16 = 3 A.I.J. 49 = 28 A. 262.

BARNUM and RICHARDS, JJ.

References.—26 A. 318 and 26 A. 334; *F.*

(16) *S. 102*—See No. 11, *supra*.

Ss. 105 and 108—See *I. 24*.

1. — Imperial Acts. — (Continued).

Act V of 1881 (Probate and Administration). — (Concluded).

(17) *Ss. 128, 130, 131*—*Demonstrative legacies, interest whether allowable on.*

S. 128 of the Act provides that the legatee is entitled to the produce of a specific legacy and Ss. 130 and 131 entitle legatees to interest on general legacies. The absence, however, of a distinct provision in regard to payment of interest on demonstrative legacies, does not imply an intention to disallow interest in such cases. As regards the matter of interest, demonstrative legacies are to be viewed as of the nature of the general legacies and, therefore, as carrying interest at 6 % per annum from the expiry of one year from the death of the testator, such interest being payable out of the income or profits from which the principal amount of the legacies has been made payable. **Chinnam Rajamannar v. Tadikonda Ramachandra Rao**, 29 M. 155.

SUBRAHMANTIA AYYAR and BORDAM, JJ.

(18) *S. 130*—See No. 17, *supra*.

(19) *S. 131*—See No. 17, *supra*.

See, also, I. 22-26.

Act XXVI of 1881 (Negotiable Instruments).

(1) Absence of consideration for the making of a pro-note—Rights of a bona fide holder in due course for consideration and without notice of want of consideration—See *PROMISSORY NOTE*, No. 2, 1 M.L.T. 393.

(2) *Ss. 4, 15*—*A non-negotiable instrument, whether could be assigned by endorsement—Assignee, whether becomes entitled thereon to sue the maker.*

This was a suit on a pro-note, without the words "order" or "bearer" or their equivalent, brought by the plaintiff, to whom the note had been assigned by endorsement thereon. It was pleaded in defence that a document, though a promissory note, was not a negotiable instrument and consequently could not be assigned by endorsement. *Held*, the document, not containing the necessary words to render it a negotiable instrument, was not capable of being transferred by mere endorsement, and it was not, therefore, competent for the assignee to maintain a suit upon it. **Parfitt v. Chalm Sukh**, 144 P.R. 1906.

ROBERTSON, J.

References.—60 P.R. 1884, 12 P.R. 1594, 10 A. 20, 24 M. 654 & 28 M. 544, *F.*

(3) *Ss. 4, 26, 27 and 28*—*Joint Hindu family—Promissory note executed by Karta—Family*

1.—Imperial Acts.—(Continued.)

**Act XXVI of 1881 (Negotiable Instruments).
—(Continued.)**

**by necessity—Liability of other members—
Agency.**

Where the *karta* of a joint undivided Hindu family borrows money on promissory notes, for the purpose of a joint family business or to meet a joint family necessity, the creditor can recover the money from all the members of the joint family, although they were not all parties to the notes.

Ss. 26, 27, & 28 of the above Act refer to cases of ordinary agency (*a*). **Balanab Chandra De v. Ramdhan Dher**, 11 C.W.N. 189.

GHOSH and GEIDT, JJ.

References:—(a) 23 M. 597 & 7 C.W.N. 725, *R.*

(*) Ss. 8, 27, 78—*Suit on a pro-note—Validity of plea that the holder is a mere benamidar not entitled to sue—Undisclosed principals cannot sue or be sued on a negotiable instrument—Law Merchant before the Act—Bills of Exchange Act, 1882—Contract Act, 1872.*

S. 78 which provides that "payment—must, in order to discharge the maker, be made to the holder" is imperative and precludes the maker, when sued on the instrument, from pleading discharge by payment to any one but "the holder". The use of the words "entitled in his own name" in the definition of "holder" in S. 8, prevents any one from claiming the rights of a "holder" under the Act, on the ground that the ostensible holder was a mere *benamidar*. Under S. 27 also, a principal can only be made liable, through his agent, on a negotiable instrument, when the agent acts in the principal's name, i.e., when he signs as agent. An undisclosed principal cannot be sued on a negotiable instrument; because, in the case of such instruments, passing from hand to hand, usage and policy alike require that the real contract should appear on the face of the instrument.

The provisions of the Contract Act as to rights and liabilities of undisclosed principals are not intended to alter well-established rules as to negotiable instruments, which continued to be governed by the law merchant reproduced in the Negotiable Instruments Act, Ss. 2, 7, (1), 28, 69, Bills of Exchange Act, are also in accordance with the above view. **Sabba Narayana Vaidiyar v. K. Ramaswami Iyer**, 1 M.L.T. 907 (F. B.).

WHITT, G. J., BENSON & WALLIS, JJ.

1.—Imperial Acts.—(Continued.)

**Act XXVI of 1881 (Negotiable Instruments).
—(Continued.)**

References:—Second Appeal No. 182 of 1891, Madras (Unreported); 21 M. 90 & 28 M. 205, *Appr.* C.R.P. No. 578 of 1895 & 7 M.L.J. 64 & 21 M. 801, *over-ruled*. 23 M. 597, *explained*. 2 C.W.N. 286; I.L.R., 9 Ch. 695; (1865) I.L.R. 1 Q. B. 97 (1848) 5 C.B. 588, *It.*

(5) Ss. 8 and 54—A promissory note may be indorsed in blank and delivered to any person, the effect of such indorsement and delivery being to convert the pro-note into one payable to bearer. Indorsement and delivery in such a way to a person, in the capacity of agent and attorney of his principal, the principal would be the person entitled to the possession of the promissory note and to recover the amount due thereon from the maker. **Namak Chand v. Durant**, 9 P.E. 1906 = 19 P.L.R. 1906.

KENSINGTON and CHITTY, JJ.

(6) S. 9—*Forged endorsement—Endorsers a bogus firm—Innocent transferee obtains no title.*

Plaintiffs were the payees of two *hundis*. They employed a broker to sell them. The broker represented to the plaintiff that the firm of Harsahai Mal Kedar Nath wanted to purchase the *hundis*, whereupon the plaintiff endorsed the *hundis*, in favour of Harsahai Mal Kedar Nath. The broker then forged an endorsement from Harsahai Mal Kedar Nath in favour of a firm which had no existence, and then another endorsement, purporting to be from this fictitious firm in favour of another, which too had no existence. The defendants, purchased in good faith and for value these *hundis*—the broker again forging an endorsement from the second fictitious firm in favour of the defendants. Upon the plaintiff's, the payee's, suing for money *held*, that they were entitled to succeed, even if the defendants were transferees in good faith and for consideration. S. 9 of the Act contemplates a person who is the payee or the indorsee of an instrument. There is a distinction between the case of a *bona fide* purchaser for value, who acquires a defective title to a negotiable instrument and a purchaser, who acquires no title whatever. **Jai Narain v. Mahesh Bakhsh**, A. L. J. 203 = A. W. N. (1906), 77 = 28 A. 425.

STANLEY, C. J. and BUNNETT, J.

References:—24 B. 65, F. L. R. 1 C. P. 578, *H.*

1.—Imperial Acts.—(Continued).

Act XXVI of 1881 (Negotiable Instruments). —(Continued).

Ss. 9 and 58—See *I, Limitation Act, No. 24.*

(7) S. 13—Endorsement on pro-note—Intention to effect 'a transfer. See *PROMISSORY NOTE, No. 4, 1 M.L.T. 329.*

(8) Ss. 14, 46, 48—Government Promissory note, transfer of interest in.

In June, 1903, the plaintiff endorsed some Government Promissory Notes of the value of Rs. 20,000 to the Secretary of State for India as security for one B, a Government treasurer. In August, 1903, he presented an application to the Deputy Commissioner, in which he stated that he had sold the notes to S, that he would endorse the notes to S when required to do so, that S had purchased the notes subject to the Secretary of State's lien, *etc.* On the following day, S presented a corresponding petition to the Deputy Commissioner, in which he stated that he had purchased the notes and had a lien on them subject to the Secretary of State's claim. About the same time, the plaintiff, by a letter, requested S to discount certain *hundis* in the name of certain firms and S discounted some of them to the extent of Rs. 9,000. Subsequently, the plaintiff brought a suit for declaration that the notes were not liable to attachment in execution of the decree of the first defendant, Allahabad Bank, against the defendant S. *Held*, that the interest of the plaintiff in the notes was transferred to S, that the transfer was purely of a *chose in action*, to which the Negotiable Instruments Act did not apply, and that the plaintiff's suit was not maintainable. **Jagan Nath v. The Allahabad Bank, Ltd., Lucknow**, 9 O. C. 174 (B).

SCOTT and WELLS, J. CS.

References.—11 M. 290, 17 M. 461, 28 M. 544, 24 M. 657 (Notes), R.

(8-a) S. 15—See No. 2, *supra*.

(8-b) S. 26—See No. 3, *supra*.

(8-c) S. 27—See Nos. 3 & 4, *supra*.

(8-d) S. 28—See No. 3, *supra*.

(9) S. 46—See No. 8, *supra*.

(10) S. 48—See No. 8, *supra*.

(11) S. 54—See No. 5, *supra*.

S. 58—*I, Limitation Act, No. 24.*

(11-a) S. 78—See No. 4, *supra*.

(12) S. 80—Hundi, suit on—Collateral agreement as to interest—Rate of interest—The

1.—Imperial Acts.—(Continued).

Act XXVI of 1881 (Negotiable Instruments). —(Concluded).

Usury Laws Repeal Act (XXVIII of 1885)
Evidence Act (I of 1872), S. 92, prov. (2).

Hundis upon which a suit was brought were silent as to interest. But it was proved that in accordance with the custom of the district the parties had entered into a collateral agreement, embodied in written documents, that the *hundis* should bear interest at 30 per cent. per annum.

Held—That S. 80 of the Negotiable Instruments Act, being an enabling section, was no bar to the recovery of interest at the above rate. **Goswami Sri Ghansham Lalji v. Ram Narain**, 11 C.W.N. 105. (P.C.)

LORD MACNAUGHTEN, SIR ARTHUR WILSON & SIR ALFRED WILLS.

See, also, *I, 27, No. 3.*

Act II of 1882 (Trusts).

(1) Position of guardian with regard to minor's property—See *GUARDIAN and MINOR*, No. 1, 8 Bom. L. R. 888.

(2) *Trust-deed, construction of and formalities necessary for—Settlement on children of grand children by way of remainder, whether valid under Hindu Law or bad as violating rule against perpetuities—Transfer of Property Act, Ss. 14, 15 and 2 (d).*

Under the trust-deed in question in this case one R and his wife conveyed certain lands to trustees in trust to pay certain monthly allowance during the joint lives of R and his wife and throughout the life of the survivor of them and on the death of the said survivor, to pay the same allowance to two grand-daughters of R. The deed further provided that, on the death of the survivor of the grand-daughters, the trustees were to hold the property in trust for the sons of the grand daughters, who attain the age of eighteen and the daughters of the grand-daughters, who attain that age or marry such that each child of the grand-daughter was to take his or her share of the *corpus* on coming of age if a male or, if a female, on being married. On the question whether such gift to the children of the grand-daughters was good under Hindu Law or bad for remoteness or on any other ground, it was *held* that, since the trust in favour of the children of a grand-child was an event which was to happen upon the death of the grand-child or of the widow

1.—Imperial Acts.—(Continued).

Act II of 1882 (Trusts).—(Continued).

whichever should last happen, and the parties, to whom an estate for life was conveyed, were in being at the date of the settlement, the gift in remainder to the children of the grand-daughters was good and valid under Hindu Law, and did not contravene the rule against perpetuities, S. 2 (d) of the Transfer of Property Act providing that nothing in the second chapter of that Act shall be deemed to affect any rule of Hindu Law.

On behalf of the appellant, it was further argued that something was required over and above the execution of the conveyance and its registration, something in the nature of physical delivery of possession in order to effect a valid transfer and it was held, there is nothing in S. 6 of the Trust Act to suggest that trust-property cannot be effectively transferred by a registered instrument. Under S. 123 of the Transfer of Property Act, transfer, by way of gift, of immovable property can be effected by a registered instrument and, there being no reason for holding that what is sufficient in the case of a gift of land is not sufficient in the case of a conveyance of land in trust, the deed in question operates as a valid declaration of trust and an effective transfer of the property. **Ranganatha Mudaliar v. Baghirathi Ammal**, 1 M. L. T. 227.

WHITE, C.J. and BRUNSON, J.

References.—9 M.I.A. 194, 9 B.L.R. 337, 32 C. 992 and 12 C. 663, R.

S. 6—I, 920.

S. 8—I, Hindu Law (Joint Family), No. 4.

S. 26—I, 28.

S. 30—I, 28.

(8) S. 53 of the Act strikes at transactions entered into by a trustee for his own profit after he has accepted the trust and while he is performing the duties of the office. But it does not render void a mortgage, in favour of a person, created before he becomes trustee of the property by the deed of trust itself as a condition of the trust imposed by the settlor.

There is nothing in the Act, that a *cestui que trust* shall not be appointed a trustee. He is not as such incapacitated from being a trustee for himself and others; but, as a general rule, he is not an altogether fit person for the office

1.—Imperial Acts.—(Continued).

Act II of 1882 (Trusts).—(Continued).

in consequence of the probability of a conflict between his interest and his duty. **Ashidbal v. Abdulla Haji Mahomed**, 8 Bom. L. R. 652.

CHANDAVARKAR, J.

(4) Ss. 81 and 83—See LIMITATION ACT, No. 18, 8 Bom. L.R. 328.

S. 82—I, Contract Act, No. 5.

—I, Hindu Law (Will), No. 9.

(5) S. 83—See No. 4, *supra*.

(6) S. 84—Registered conveyance in fraud of third person's title—Plaintiff "in *par delicto*" with defendant not entitled to any relief—illegal purpose not carried into execution," meaning of the words—Partial but substantial performance sufficient execution.

Plaintiff sued for recovery of price alleged to have been paid by him to first defendant on account of sale of land by the latter, of which land plaintiff was subsequently deprived. Defendant alleged that, in pursuance of a conspiracy between him and the plaintiff to defeat the title of a third person in possession of the land under a prior oral sale to him followed by an unregistered instrument by its original owner, plaintiff got the original owner's son to execute a registered conveyance of the land in favour of the 1st defendant, who in his turn was made to convey it to plaintiff under the registered sale-deed in question. Defendant, therefore, pleaded that plaintiff as one concerned in the fraud of which, the execution of the present conveyance to him formed part, was not entitled to seek the relief claimed as for breach by vendor of warranty of title. *Held*, plaintiff was not entitled to recover, as the transaction of the sale he relied on was part of a fraud in which he himself was concerned. Further, on the contention raised for the plaintiff that he was not debarred from seeking relief since the unlawful compact was not fully carried out and the third person conspired against was not in fact defrauded and the illegal purpose in this case was "not carried into execution" within S. 84 of the Act. *Held*, the unlawful agreement need not be fully carried out to warrant the application of the rule as to persons *in pari delicto* (a). Part performance of a substantial character would suffice to prevent the plaintiff from recovering and such a partial execution of

I.—Imperial Acts.—(Continued).**Act II of 1882 (Trusts).—(Concluded).**

an illegal purpose must be regarded as " carrying out into execution " of the illegal purpose within the meaning of S. 84 of the Act. **Muthoo Raman Chetty v. Krishna Pillai**, 15 M.L.J. 478=29 M. 72.

SURABHMANIA AYYAR, OFFG. C. J., and **SANKARAN NAIR**, J.

References.—(a) 24 Q.B.D. 742 and 15 Q.B. D. 661, F.

(7) S. 91—See **TRANSFER OF PROPERTY ACT (IV of 1882)**, No. 18, 29 M. 177.

Act IV of 1882 (Transfer of Property).—See **TRANSFER OF PROPERTY ACT.**

Act V of 1882 (Easements).—See under **EASEMENTS ACT.**

Act VI of 1882 (Companies).

(1) S. 4—*Association under chit agreement, members of, more than twenty—Registration.*

A chit fund was started on a *karanamah* entered into between first defendant and another, both of whom were the organisers of the chit ; and the members specified therein were, at the beginning, fourteen in number. Subsequent to the date of the *karanamah*, however, other members were being admitted, so that, at the time when the present suit was brought, the total number of members exceeded twenty. The question, therefore, had to be decided, whether the parties to the agreement constituted an illegal association, for not having been registered under S. 4 of the Indian Companies Act or whether the said two organisers were alone the proprietors of the chit, registration of which, therefore, being unnecessary. Following the decision reported in 20 M. 68, the District Judge decided that registration of the association was unnecessary, because the agreement in question was of the usual kind and the subscribers stood in no relation to each other, but each subscriber was personally liable to the managers, and the managers to him. On appeal, under the Letters Patent, presented against the order, of the High Court on the revision petition preferred from the decree of the District Court, it was considered essential that all doubts that might be held as to the necessity or otherwise for the registration of such associations should, as far as possible, be set at rest and reference was therefore made to the Full Bench, of the question whether the parties to the above agree-

I.—Imperial Acts.—(Continued).**Act VI of 1882 (Companies).—(Continued).**

ment constituted an association of such nature that, under S. 4 of the Indian Companies Act, 1885, registration was necessary. *Held*, by the Full Bench, applying the test correctly laid down in 20 M. 68 (73) viz., "to constitute an association, within the meaning of the section, the existence of a legal relation between more than twenty persons giving rise to joint rights or obligations or mutual rights and duties is absolutely necessary," the parties to the instrument in question did not constitute an association requiring registration under S. 4 of the Act, seeing that, though the organisers of the chit fund were styled in the instrument as agents yet taken as a whole it showed beyond doubt that they were really the principals or proprietors. **Neelamega Sastri v. S. Appiah Sastri**, 1 M.L.T. 237=16 M. L. J. 385=29 M. 477.

WHITE, C.J., and **SURABHMANIA IYER** and **BENSON**, JJ.

References.—20 M. 68, *Appr.*, 19 M. 81, 11 M.L.J. 180 and 1 M.L.T. 106, R.

(2) S. 4—*Chit association of more than 20 persons—Necessity for registration—Suit to recover subscriptions paid to an unregistered association, maintainability of—*

Suit to recover the amount paid by the plaintiff on account of subscriptions in a chit-fund. In this case, the question whether the suit was maintainable had to be decided and that depended on whether the said chit-fund, which was an association of more than 20 persons, with the acquisition of gain for its object, was not an illegal association for want of registration under S. 4 of the Indian Companies Act (VI of 1882). *Held*, the collocation of the terms used in the above S. 4 shows that an 'association,' so as to fall within the purview of the section, need not necessarily be a company or a partnership strictly so called, but that a combination of more than 20 persons associated together for a common purpose, having for its object the acquisition of gain, is enough to satisfy the requirements of the terms.

In the present case, the chit-business having been started and conducted by all the subscribers acting together, as a joint concern, and the number of such subscribers being more than 20 in number, the "association" is one requiring registration under the Act and not

I.—Imperial Acts.—(Continued).**Act VI of 1882 (Companies).—(Concluded).**

having been so registered it is an illegal association, and the present suit based on a contract founded upon that illegal association is, on the authority of the ruling reported in *Ramasami Bhagavathar v. Nagendrayya* (a) not maintainable. *Madasami Asari v. Pechi Asari alias Pechi Muthu Asari*, 1 M. L. T. 106.

MOORE, J.

References.—(a) 19 M. 81, F., 20 M. 68, 22 M. 412 and 1 M. H. C. R. 448, D.

S. 45—I, 30.

(3) S. 58—*Suit by a share-holder—Jurisdiction—Right to vote at meetings of share-holders—Cause of action, when not allowed to vote.*

At a meeting of the share-holders of a Company, certain of the share-holders were, according to the decision of the majority of those present, not allowed to vote; these share-holders instituted a suit for a declaration that they were entitled to vote at the meetings of the Company.

Held, that the plaintiffs had a cause of action, although their names might not have been struck off from the list of share-holders and that there was nothing in the Companies' Act to exclude the jurisdiction of ordinary Civil Courts in such a suit (a). *Gobinda Prosad Das v. Akhey Kumar Dey*, 10 C. W. N. 206.

RAMPINI, and WOODROFFE, JJ.

Reference.—(a) 6 Ch. Div. (40 and 41, Vic.), 70, R.

Ss. 58, 147 and 169—I, 30.

(4) S. 214—Company—Liquidation—Director—See CIVIL PROCEDURE CODE, No. 86, 7 Bom. L. R. 246.

S. 242—I, Company, Nos. 1, 3, 4 and 8.

See, further, I, Act VI of 1882.

—I, Civil Pro. Code, Nos. 87 and 248.

—I, Act I of 1874 (Bombay), No. 1.

—I, Contract Act, No. 12.

Act XV of 1882 (Presidency Small Cause Courts).—(Continued).

(1) S. 38—*New trial—C. P. Code, S. 108*

—*Re-hearing of suit decreed ex parte—Rules made by the High Court—Rule 70.*

When a suit has been decreed *ex parte* and an application under S. 108 of the C. P. Code, for setting aside such decree dismissed, an applica-

I.—Imperial Acts.—(Continued).**Act XV of 1882 (Presidency Small Cause Courts).—(Concluded).**

tion cannot be made under S. 38 of the Presidency Small Cause Courts Act for a new trial. S. 38 only applies "where the case has been contested." Where there was no contest, there was no "trial" and consequently there cannot be a "new trial" (a).

In an application, under S. 38, for a new trial of the matters arising under S. 108, C. P. Code, and Rule 70 of the High Court's Rules, the Small Cause Court has no jurisdiction to go into the merits of the case. *Ananta Coomari Dassi v. Radharani Dassi*, 8 C. L. J. 199.

MACLEAN, C. J. and BANNERJEE, J.

References.—22 C. 784 and 10 B. L. R. 355, Distd.

(2) S. 38—*Small Cause Court—Ordering a new trial—Jurisdiction—Civ. Pro. Code (Act XIV of 1882), S. 622—High Court—Revision.*

The jurisdiction exercised by a Presidency Small Cause Court under S. 38 of the Act, is in no way limited, like the jurisdiction exercised by the High Court, under S. 622 of the Civ. Pro. Code, 1882. S. 38 is in widest possible terms. *Bapuji Dorabji v. Dastur Kalkushru*, 8 Bom. L. R. 678.

JENKINS, C. J. and BEAMAN, J.

(3) Ch. VII—Power of the Small Cause Courts to set aside *ex parte* order—See Civ. Pro. Code, No. 84, 8 Bom. L. R. 803.

Act VII of 1887 (Suits Valuation).

(1) Ss. 3, 7, 8, 11—*Suit for declaration of title to land—Valuation fixed for purposes of jurisdiction—Court's power to fix valuation when it is disputed.*

The words "as determinable" in S. 8 of the Suits Valuation Act, mean determinable by the Court, which has to try the case.

Per ASTON, J.—There is no express provision in the Suits Valuation Act, making the valuation, for the purposes of jurisdiction, *prima facie* determinable by the plaintiff in any suit, which can be valued lower for the computation of Court-fees. S. 4 of that Act indicates that the principle adopted by the legislature, for valuing a suit mentioned in Sch. II, Art. 17, Court Fees Act, which relates to land or an interest in land, is that the value of such a suit for purposes of jurisdiction

I.—Imperial Acts.—(Continued).

Act VII of 1887 (Suits Valuation).—(Continued).

shall be governed by the value of the land or interest in land. Where such value is not determined by Rules made under S. 3 of the Suits Valuation Act, the value must, (where disputed), be determined by judicial decision in the suit, such determination being subject to the provisions of S. 11 of the Act. **Dayaram Jagjivan v. Gordhandas Dayaram**, 8 Bom. L.R. 885.

RUSSELL, Ag. C. J., and ASTON, J.

References:—2 A. 720, 13 C. 102, 15 B.L.R. App. 1, 4 B. 515, 29 B. 207, 8 C. 975, 29 B. 220, 17 C. 680, 683, 8 C. 75, 9 B. 20, 27 M. 480 and 8 B. 31, *R.*

(1-a) S. 7—See No. 1, *supra*.

(1-b) S. 8—See No. 1, *supra*.

(2)—S. 8—Jurisdictional value for suit for settlement of accounts—See COURT FEES ACT (VII OF 1870), No. 6, 46 P.R. 1906.

(3) *Ss. 8, 9, 12—Bengal, N. W. P., and Assam Civil Courts Act (XII of 1887), Ss. 18, 19—General Clauses Act (I of 1887), S. 3 (13)—“Value”—Jurisdiction—Suit for restitution of conjugal rights—Capability of valuation—long practice.*

The practice, which has prevailed for upwards of half a century, of allowing the plaintiff, in a suit for restitution of conjugal rights, to put a value on the relief, which he asks for, and thus determine the jurisdiction, is not illegal and should not be departed from.

The word “value” in S. 19 of Act No. XII of 1887 may be interpreted to mean the valuation put by the plaintiff on the relief sought by him.

A suit for restitution of conjugal rights does not admit of being satisfactorily valued, but the plaintiff can put his own valuation, subject to the power of the Court to refuse to accept the valuation if it is not *bona fide*. A money value, however arbitrary, can be placed on all suits. A Munsiff can, therefore, try a suit for restitution of conjugal rights, the value of which, as fixed by the plaintiff, is within his pecuniary jurisdiction. **Zaer Husain Khan v. Kurshed Jan**, 3 A. L. J. 266 (F.B.)=A. W. N. (1906), 90=28 A. 545.

STANLEY, C.J., and BURKITT and AIKMAN, JJ.

Reference.—31 C. 849, *Diss.*

(4) S. 9—See No. 3, *supra*.

I.—Imperial Acts.—(Continued).

Act VII of 1887 (Suits Valuation).—(Concld.)

(5) S. 11—Partition, Suit for—Valuation.

The value of a suit for partition for purposes of jurisdiction, is the value of the entire estate sought to be partitioned (a), and not that of the share claimed by the plaintiff.

Where, however, the suit had been erroneously valued in the Court of first instance according to the share of the plaintiff:

Held, that S. 11 of the Act was applicable and the appellate Court would not interfere, unless it was proved that the undervaluation had affected prejudicially the disposal of the suit (b). **Edward Dalglish v. Ramdhari Sahu**, 4 C.L.J. 509.

HARINGTON and PRATT, JJ.

References:—(a) 3 C. L. J. 197, *F.* (b) 1 C. W. N. 186, *Appl.*

(6) S. 11—See JURISDICTION (GENERAL), No. 2, 71 P. L. R. 1906 & No. 1, *supra*.

—S. 11—I, 31.

(7) S. 12—See No. 3, *supra*.

—See, further, I, Civil Pro. Code, No. 315.

Act IX of 1887 (Provincial S. C. Courts).

See SMALL CAUSE COURTS (PROVINCIAL) ACT IX OF 1887.

Act V of 1888 (Inventions and Designs).

(1) Rule issued under S. 30 on respondent—Respondent shewing cause by affidavits—Issue directed to be tried—Onus of proof at trial.

The applicant obtained a rule under S. 30 of the Act, calling upon the respondent to show cause that he had not acquired exclusive privilege in a certain invention. The respondent showed cause against the rule by affidavits, but the Court, instead of discharging the rule, directed the issue to be tried.

Held—At the trial, the onus of proof lay on the respondent. *In re Inventions and Designs Act of 1888 and Alexander Gray*, 10 C.W.N. 985.

HARINGTON, J.

Act IV of 1889 (Merchandise Marks).

S. 19 A—See TRADE-MARK, No. 2, 4 C. L. J. 268.

Act VII of 1889 (Succession Certificate).

S. 1, cl. 4—I, 39.

(1) *Ss. 3 (2), 8 and 9—Grant of certificate—Order to file security—Practice.*

1.—*Imperial Acts.*—(Continued):

Act VII of 1889 (Succession Certificate).— (Continued).

Where a Judge, acting under S. 9 of the Succession Certificate Act, requires security to be furnished by a person, to whom a certificate of succession is granted, the amount of the security should be specified in the order and a time should be prescribed within which the security must be furnished.

Semle—that S. 8 of the Act cannot be applied to the case of a fixed deposit in a bank, such a deposit not being a "security" within the meaning of S. 8 (2). **Gulraj Kunwar v. Jagdeo Prasad, A.W.N. (1906), 94=28 A. 477.**

BANERJI and RICHARDS, JJ.

(1-a) S. 4.—*Succession Certificate—Execution of decree—Jurisdiction of execution Court to question validity of decree.*

Where the Court refused execution of a decree, on the ground that it should not have been passed, since plaintiff had not obtained succession certificate before passing of the decree—

Held, that, as the Court executing a decree is not competent to question the validity of a decree passed by a Court of competent jurisdiction, the execution Court had acted with material irregularity in refusing execution of the decree. **Tika Bai v. Godha Ram, 145 P.L.R. 1906.**

LAL CHAND, J.

(2) S. 4.—'Debt'—*Suit on a mortgage—Decree against the mortgaged property—Decree against person.*

No succession certificate need be taken when the suit is one by a mortgagee to recover the mortgage-money by sale of the mortgaged property, the decree in such a suit not being a 'debt' within the meaning of S. 4 of the Act: but a certificate is necessary as a condition precedent to the passing of a decree, if the suit is one to enforce the personal obligation of the mortgagor. **Palaniyandi Pillay v. Veeramal, 20 M. 77.**

SUBRAHMANYA AYYAR, OFFG. C. J. and BODDAM, J.

Reference.—18 A. 259, not F.

S. 4—I, 32.

S. 5—I, 33.

(2) S. 8—See No. 1, *supra*.

(4) S. 9—See No. 1, *supra*.

—S. 18, cl. (e)—I, *Right of Suit*, No. 35.

1.—*Imperial Acts.*—(Continued).

Act VII of 1889 (Succession Certificate).— (Concluded).

(5) S. 19—*Insurance—Premium paid out of salary of deceased—Sum insured prima facie his separate property.*

Application for a certificate under the Act, in respect of moneys due to deceased on policies of insurance, was made by his widow but opposed by his brother, who set up his title by survivorship and prayed for a certificate in his own favour. The District Judge granted the certificate to the brother. On appeal by the widow, *held*, the lower Court ought to have issued the certificate to the widow, acting on the view that the money in question was *prima facie* the separate property of the deceased, the premium having been paid by him out of his salary (a) and the brother must have been left to establish his right by suit, chiefly because he had based his claim solely upon the assumption that the education of the deceased was at the expense of the family. **Rajamma v. Ramakrishnappa, 29 M. 121.**

SUBRAHMANYA AYYAR, OFFG. C. J. and SANKARAN NAIR, J.

Reference.—(a) 13 M. L. J. 75, R.

S. 19—I, 33.

Act VIII of 1890 (Guardians and Warda).

Ss. 3, 9 and 10—*See I, Guardians and Warda Act, No. 1.*

Ss. 3, 16 and 29—,,—No. 2.

(1) Ss. 4, 7, 12, 47, cl. (a)—*Guardian of an infant, order appointing—Guardian ad litem, power to appoint—"Court," meaning of—Appeal against order—Appellate Court, power of, to direct stay of order appealed against—Appellate Court, power of, to make ad interim order appointing guardian—C.P. Code, Ss. 545, 582—Procedure, if to be regulated only by the Code—Onus of proof—Status quo, maintenance of—Injury to infant—Inherent power of Court—High Court.*

Per WOODROFFE, J.—Civil Courts, in this country, have, in matters of procedure, powers beyond those, which are expressly given by the Code of Civil Procedure, which binds the Courts only so far as it goes. The Code does not affect powers previously possessed unless it expressly takes them away. It does not affect the power and duty of the Courts to act according to

1.—Imperial Acts.—(Continued).

Act VIII of 1890 (Guardians and Wards).— (Continued).

equity and good conscience in cases for which no express provision is made.

The Court has an inherent power to do that justice for the administration of which alone it exists.

Per curiam.—An appellate Court, having seizin of an appeal, has power to make an order staying proceedings in a lower Court pending the hearing of the appeal to that Court. The power to stay proceedings is ancillary to the power of the appellate Court as the appellate authority to reverse the order of the inferior Court (a).

The High Court, has power, pending an appeal before it, against an order appointing a guardian of an infant under the Guardian and Wards Act, to stay proceedings in the lower Court for the carrying out of the order appealed against.

The High Court as an appellate Court, has the power to make an interlocutory order appointing an *ad interim* guardian. *Per MOOREJEE, J.*—The appellate Court, when it hears the appeal, is competent to make, in substitution for the order passed by the inferior Court, such an order as, in its opinion, ought to have been passed by that Court; and, as ancillary to the power which the appellate Court thus possesses of appointing a proper person as guardian, it possesses also the power to appoint a temporary guardian during the pendency of the appeal. The Court, in an appeal from the final order, has in this respect the same power which has been expressly conferred upon the Court of first instance (b).

Such power may be exercised, even though no statutory provision has been made for it. When a party has got an order in his favour from the lower Court, he is entitled to rely on that order and thus to throw the onus upon the party appealing against the order, of satisfying the superior Court as to why that order should not be immediately carried into effect, and why a temporary guardian should be appointed; and, if a satisfactory case is made out by him, the High Court will interfere and order that the *status quo* should not be disturbed during the pendency of the appeal.

Quære.—Whether S. 545, C. P. Code, applies to an application for the stay of proceedings in the lower Court under an order appointing a guardian of an infant (c)? *Panchanan*

1.—Imperial Acts.—(Continued).

Act VIII of 1890 (Guardians and Wards).— (Continued).

Singha Roy v. Dwarka Nath Roy, 8 C.L.J. 29.

WOODROFFE, MOONRAY, JJ.

References.—(a) 5 D.W.N. 781 and 31 C. 722, R. (b): 28 C. 784, R. (c): 28 C. 784, R.

(2) S. 7.—*Testamentary guardian, removal of, when his interests are adverse to the minor.*

A person, who is to succeed to the property of a minor on his death has an interest adverse to the minor; and, if he is not a blood relation of the minor, he is not fit to be a guardian of the minor's person, although appointed by the latter's deceased father's will to be guardian of both the person and property of the minor; but if the will is otherwise valid, its provision must be given effect to as regards the property of the minor. *Sami Ram v. Ellavatha Row Gayabavada*, 16 M. L. J. 357.

DAVIES & BENSON, JJ.

(3) S. 7.—See No. 1, *supra*.

(4) Ss. 7, 34.—*Indian Majority Act (IX of 1875), S. 3*—Attainment of majority by infant of whose person and property a guardian has been appointed—Order appointing guardian on his furnishing security, if complete before security is given.

So far as the infant is concerned, he is put in the position of a ward as soon as the Court has made up its mind as to the matters set out in cls. (a) and (b) of S. 7 of the Guardians and Wards Act; and the proviso that the guardian should give security is merely an additional precaution to protect the interest of the infant.

The effect of the order requiring security is to suspend the acts of the guardian till he gives security. But, as soon as an order is made, under S. 7, the infant becomes a minor and remains a ward irrespective of any act of the guardian until he attains the age of 21 years (a). *Gopal Chunder Bose v. Ganesh Chunder Brimani*, 4 C.L.J. 112.

STEPHEN, J.

Reference.—(a) 17 C. 247, R.

(5) Ss. 7, 47, 48.—*An order by a District Judge under S. 7, if open to review.*

An order made by a District Court, under S. 7 of the Act, refusing to appoint a guardian, is, under S. 47 (a), open to appeal to the High Court; but S. 48 provides—"save as

1.—*Imperial Acts.*—(Continued).

Act VIII of 1890 (Guardians and Wards).— (Continued).

by S. 47 of the Act and by S. 623 of the Code of Civil Procedure, an order under the Act shall be final and shall not be liable to be contested by suit "or otherwise." Held therefore that, under the wording in the above sections, the Legislature could not have intended that S. 623 of the Code should be applicable to such a case, since the words "or otherwise" necessarily precluded the notion that such orders were liable to be contested on review. **Farid v. Mittho**, 143 P.N. 1906.

RATTIGAN & LAL CHAND, JJ.

(6) S. 10—Guardian and Minor—Paternal uncle or mother—See **MAHOMEDAN LAW (GUARDIANSHIP)**, No. 2, A. W. N. (1906), 256.

S. 10—I, *Guardians and Wards Act*, Nos. 1 and 3.

(7) S. 12—See No. 1, *supra*.

(8) Application for certificate of guardianship by the mother of an unmarried female minor—Second marriage of the mother, a Mahomedan, no valid objection—See **CIVIL PRO. CODE**, No. 256, A.W.N. (1906), 64.

S. 16—I, *Guardians and Wards Act*, No. 2.

(9) S. 17—Right of guardianship—Competition between outcasted mother and paternal grand father in caste—Hindu Law—See **ACT XXI of 1850 (CASTE DISABILITIES REMOVAL)**, No. 1, A.W.N. (1905), 205.

(10) S. 17—Mother's right to the custody of minor girl handed over to a mission to be taken care of—See **MINOR**, No. 2, 1 M. L. T. 347.

S. 17—I, *Act XXI of 1850*, No. 1.

(10-a) S. 23—Collector—Board of Revenue, sanction by—Manager, powers of—Delegatus non potest delegare.

Where the Collector is authorized by the Board of Revenue, as Court of Wards, under S. 23 of the Act, to raise a loan on mortgage of the Ward's property, he can delegate his powers to the manager acting under him.

The maxim "*delegatus non potest delegare*" is to be understood with this necessary qualification that, in any particular case, if no authority to delegate has been given, such authority may be implied from the circumstances of the case. **Jogeshwar Narain Singh v. Rai Radha Rawan**, 8 C. L. J. 165.

PRATT and PARTEY, JJ.

1.—*Imperial Acts.*—(Continued).

Act VIII of 1890 (Guardians and Wards).— (Continued).

(11) Ss. 29, 30—Guardian and Ward—Sale by guardian of ward's property—Conditional permission—Condition not fulfilled—Sale voidable.

The certificated guardian of a minor obtained permission from the Court to sell certain property belonging to the ward under the following conditions, namely, "provided the applicant files receipt for the amount paid over to the mortgagee in this Court and invests the balance in the minor's name in a security approved by the Court within six weeks' time." Held, by **BANERJI, J.**, that a sale, in the carrying out of which the vendee, who had knowledge of the Court's order, and the vendor entirely ignored the terms of the order granting permission to sell, was a sale which under the circumstances was voidable at the instance of the minor. **Kunja Mal v. Gauri Shankar**, A.W.N. (1905), 274=1 M. L. T. 52=3 A. L. J. 80.

BANERJI, J.

(12) S. 30—See No. 11, *supra*.

(18) S. 30—Act No. XL of 1838 (*Minors Act*), section 18—Guardian and minor—Lease by guardian in excess of his powers—Sale of leased property by minor on attaining majority—Suit by purchaser for possession—Limitation—Act No XV of 1877 (*Indian Limitation Act*), Sch. II, art. 91.

The certificated guardian of a minor granted, without previously obtaining the permission of the Court, a perpetual lease of certain immovable property, forming part of the minor's estate, on the 28th of March, 1893. The minor came of age on the 7th of December, 1901, and on 21st of October, 1902, sold the property, the subject of the lease mentioned above. On the 22nd of July, 1903, the purchaser sued for possession of the property purchased by him, asking for cancellation of the lease, if necessary. Held, that it was not necessary for the plaintiff to ask for cancellation of the lease as a condition precedent to his obtaining a decree for possession, and that the suit was not barred by limitation. **Abdul Rahman v. Sukhdoyal Singh**, A.W.N. (1905), 176=2 A.L.J. 507=28 A. 80.

BANERJI and RICHARDS, JJ.

References.—3 A. 362, 9 A. 340, 5 A. 400 and 14 M. 26, *Reft. to*.

(14) S. 34—See No. 4, *supra*.

I.—Imperial Acts.—(Continued).**Act VIII of 1890 (Guardians and Wards).—(Concluded).**

(15) *Ss. 34, 35, 36 and 37—Administration-bond—Assignment—District Judge.*

No appeal lies from an order, passed by the Dt. Judge, under S. 35 of the Act, declining to assign the bond.

A bond, under S. 34 of the Act, is to be given to the Judge of the Court to ensure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what the guardian may receive in respect of the property of the ward. There is nothing in the section (or in the form of the bond given in the schedule to the High Court Civil Circular Orders) which suggests that the bond ceases to operate either on the death of the guardian or of the ward or on the cesser, otherwise, of the guardianship.

It is competent to a Dt. Judge to assign the bond, which is passed in his name, to a third person. **Ganpat Tatya Mahimkar v. Anna bin Anandrao**, 7 Bom. L.R. 803 = 30 B. 164.

JENKINS, C.J. and ASTON, J.

(16) S. 35—See No. 15, *supra*.

(17) S. 36—See No. 15, *supra*.

(18) S. 37—See No. 15, *supra*.

(19) S. 45—*Termination of guardianship by minor attaining majority, effect of, on jurisdiction of Court.*

The fact that one of the minors under the guardianship has ceased to be a minor does not preclude the District Judge from taking action, under S. 45 of the Act, and requiring the guardian to deliver up any property of the ward that might be in his possession or under his control (a). **Abdul Rahman Sahib v. Abdulla Sahib**, 16 M.L.J. 286.

SUBRAHMANYA AYYAR and MOORE, JJ.

Reference.—(a) 5 C.W.N. 207, *Distl.*

(19-a) S. 47—See No. 5, *supra*.

(20) S. 47 (a) See No. 1, *supra*.

(21) S. 48—See No. 5, *supra*.

Act IX of 1890 (Railways).

(1) *Ss. 3 (6), 77 and 110—Notification of claim for refund as condition precedent to suit—To whom such notification must be given.*

Where the plaintiff sued a Railway Company for recovery of money alleged to have been taken

I.—Imperial Acts.—(Continued).**Act IX of 1890 (Railways).—(Concluded).**

by the defendant as freight upon certain goods in excess of what was legally due, and before filing the suit gave notice of her claim for a refund to the General Traffic Manager, it was held that this was not a compliance with the provisions of the Indian Railways Act, 1890, and the suit could not be maintained. **Great Indian Peninsula Railway Company v. Chandra Bai**, A. W. N. (1906), 101 = 3 A. L. J. 320 = 28 A. 552.

STANLEY, C. J. and BURKITT, J.

References.—22 M. 137, 24 C. 306, 26 B. 669 and 26 A. 207, *F.*

(2) S. 72 (2)—*Suit for damages against a Company, for acts of their servants amounting to gross negligence—"Risk-note," effect of, in absolving the Company from liability for the damage.*

Plaintiff sued a Railway Company for damages for loss and deterioration resulting from a misdelivery, by one of the Company's servants, of a consignment of wool. The Company set up, in answer, a special contract, which the plaintiff's consignor entered into with the Company and which was embodied in a Risk-note, by which the consignor, in consideration of having the wool carried at a rate below the ordinary tariff rate, agreed to hold the Company 'harmless and free from all responsibility for any loss or damage to the consignment.' Held, that the Risk-note constituted an agreement, conforming in every respect to the requirements of S. 72 (2) of the Act and its terms leave no alternative but to hold, that, as the effect of the Risk-note, in no case, would the Railway Company be liable to account to the consignee for any loss from any cause whatever. **Hiralal v. Bengal-Nagpur Railway Company**, 2 N. L. R. 125.

DRAKE-BROCKMAN, A.J.C.

References.—17 B. 417, 19 B. 159, 18 A. 42 and 30 C. 257, *F.*

(3) S. 77—See No. 1, *supra*.

(4) S. 140—See No. 1, *supra*.

Act IV of 1893 (Partition).

(1) S. 4—*Undivided family, meaning of—*

Held, that according to S. 4 of the Partition Act, the words "undivided family" must be so interpreted as to include every family,

1.—*Imperial Acts.*—(Continued).

Act IV of 1893 (Partition).—(Concluded).

whether it be a Hindu or otherwise, and one which is undivided *qua* the particular dwelling house; and the words, "dwelling house" must be interpreted to mean not only the house in which the members of an undivided family actually live, but also which belongs to the family and in which other members of that family have a right to live, if they feel so inclined to do. **Kalka Prasad v. Bankey Lal**, 9 O. C. 156.

WELLS, J. C.

Act I of 1895 (Land Acquisition).

(1) Decision as to right to claim compensation under, whether binding as *res judicata*—See *RES JUDICATA*, No. 12, 29 M. 173.

(2) "House", meaning of—*Land necessary for convenient use of house, acquisition by Government of portions of—Part of property acquired for public purposes, owner desiring that the whole should be acquired.*

Under the Land Acquisition Act, the Local Government proposed to acquire certain land, which comprised a courtyard and some roofless buildings attached to a building known as the Machhliwari Baradari. The upper story of the building, with the land proposed to be acquired, would have constituted a comfortable residence and, without that land, the upper story could not conveniently be used as a residence by any person of the class, which could afford to take it. The owners of the Baradari urged that the Government could not acquire a part but was bound to acquire the whole of the property.

Held, that in S. 49 of the Act, the word 'house' is not confined to land covered by a building and includes not only a courtyard attached to a house but also as much of the land appurtenant to the house as is necessary for the convenient occupation of the same; and, therefore, the Government was not entitled to acquire the land in suit, alone, without the consent of the owners. **Nawab Mumtaz-ud-Daula v. The Secretary of State for India in Council**, 9 O. C. 811 (B.).

CHAMBER and EVANS, J. CS.

References:—(a) 8 O. C. 118, 11 A. 878, 30 L. J. Ch. 895 and L. R. 1 Ch. App. 275, R.

(3) *Divisional Judge, whether could decline jurisdiction on denial of title by Government, on reference under the Act.*

1.—*Imperial Acts.*—(Continued).

Act I of 1894 (Land Acquisition).—(Continued).

Upon a reference under the Land Acquisition Act for decision of a matter by a Divisional Judge, his function is, ordinarily, apart from questions of apportionment among contesting claimants, merely to see whether the Collector's award is or is not adequate, *i. e.* the objectors have to show him that it is inadequate in amount and, in the absence of such proof, the award of Collector stands, whatever Government may have pleaded and the fact that the objector's title to the property was attempted to be denied by the Government does not enable the Judge to decline jurisdiction to determine the reference. **Amolal Shah v. The Collector of Lahore**, 115 P. R. 1906.

JOHNSTONE and HURRY, JJ.

References.—7 A. 817, 19 A. 389 and 30 C. 36 (P. C.), R.

Ss. 3, 9 and 11—I, 34, No. 2.

Ss. 6, 9, 11, 15, 18 and 40—I, 35, No. 3.

(4) Ss. 6, 9, 12, 16 and 18—*Title, question of—Land acquired for the benefit of a Municipality—Act X of 1870.*

Whenever a question of title arises between rival claimants, it must, under the terms of the Land Acquisition Act, be decided in the case, and cannot be made the subject of a separate suit.

What has to be acquired in every case under the Land Acquisition Act, is the aggregate of rights in the land, and not merely some subsidiary right, such as that of a tenant (*n*).

Where the Government or a Municipality or other local authority, for whose ultimate benefit the land is being acquired, claims to be the full owner, and no other person has any sort of right in the land, there is nothing to be acquired.

But, where the claim of the Municipality or other local authority is to a restricted right, there is nothing in the Act to prevent the Government from acquiring the land and then dealing with it in any manner it chooses. It is the Government that obtains the title by acquisition, and neither the tenant under the Municipality nor the Court has any concern with the arrangements between the Government and the Municipality, after the acquisition of the land.

There is nothing to limit the scope of the Act, so as to exclude from its operation all

1.—Imperial Acts.—(Continued).

Act I of 1894 (Land Acquisition).—(Continued)
cases in which a Municipality or other local authority, for whose ultimate benefit the Government may wish to take action, happens to have some interest in the land to be acquired. **Babujan v. The Secretary of State for India in Council, and The Chairman, Gaya Municipality**, 4 C.L.J. 256.

PRATT and ORMOND, JJ.

References.—(a) 7 A. 817 and 19 A. 339, D.

(5) Ss. 6, 11, 26, 50—Award by Special Judge, appeal against—Bustee lands within the town of Calcutta, acquisition of—Market value, if proper—Valuation of land independently of huts erected, if legal—Calcutta Municipal Act (III of 1899), S. 557 cl. (d)—Presumption, statutory, if applicable, to case—"Land," "District," and "Re-assessment," meaning of, as used in the section—Valuation, time from which, takes effect.

The term "land," as used in S. 557, clause (d) of the Calcutta Municipal Act (III of 1899) includes bustee land and is not restricted in its application to building land.

The term "District," as used in the proviso to S. 557, clause (d) of the Act, is equivalent to the term "Ward," and the two terms are synonymous.

The term "Re-assessment" as used in S. 557, cl. (d) of the Act, is equivalent to re-valuation, (assessment signifying the official valuation of property for the purpose of taxation or the value assigned to property for this purpose) and not the re-imposition of "rate" or "tax."

The re-valuation of bustee land must not be imagined to take place by operation of law from year to year.

The valuation does not mean merely the amount of the valuation but covers the whole process or act of valuation; when a substantial part of the act of assessment or valuation was completed before the commencement of the Act of 1899, it cannot be reasonably maintained that there was a re-assessment after the commencement of the Act, because some objection to the re-assessment or re-valuation might have been preferred or disposed of after that date.

The presumption laid down in cl. (d) of S. 557 of the Calcutta Municipal Act (III of 1899) does not apply to a case where there has been

1.—Imperial Acts.—(Continued).

Act I of 1894 (Land Acquisition).—(Continued).
no re-assessment made after the commencement of the Act for the whole district or ward in which the land acquired is situated.

Property, for the purpose of valuation, cannot be divided into fragments; it must be taken as a whole and its income ascertained on the assumption that the huts, which stood on the land, were let out to tenants; the value of the land cannot and ought not to be determined independently of the huts.

S. 557, cl. (d) of the Calcutta Municipal Act is not limited in its application to cases, where the Municipal authorities acquire land or buildings for themselves, but it includes cases where the acquisition is made for them by the Local Government. **The Secretary of State for India in Council v. Behalambara**, 3 C. L. J. 169 = 10 C. W. N. 289 = 33 C. 396.

RAMPINI and MOOKERJEE, JJ.

Reference.—26 C. 74 (77), *Refd. to*.

(6) Ss. 6, 23—Damage by Public Works Department before publication of notice under S. 6, separate suit maintainable by owner for compensation for.

In cases where the Public Works Department has entered upon and caused damage to land before the publication, under S. 6 of the Act, of the notice of its intended acquisition or has removed trees or crops on the land before the Collector's taking possession thereof, the remedy of the owner could only be a separate suit by him for the damages incurred, because in assessing compensation under S. 23 of the Act, all that the Collector is competent to take into consideration is, firstly, the market value of the land at the date of the publication of the declaration under S. 6 of the Act, and, secondly, the damages sustained by the person interested by reason of the taking of only such standing crops or trees as may actually have been on the land at the time of the Collector's taking possession thereof.

Any compensation that could be awarded for the severance ought to be assessed separately and distinctly from other compensations due on the acquisition (a). **Ma Syi v. The Secretary of State for India in Council**, 3 L.B.R. 117.

ADAMSON, C.J., AND FOX, J.

Reference.—(a) 3 L.B.R. 208, F.

1.—*Imperial Acts.*—(Continued.)

Act I of 1894 (Land Acquisition).—(Continued).

(7) S. 9—See No. 4, *supra*.

(8) S. 11—See No. 5, *supra*.

(9) S. 12—See No. 4, *supra*.

(10) Ss. 12, 13—Acquisition of land—Collector's award—Notice by the Collector—Reference to Court by Collector—Notice—'Immediately'—Construction of Statute or written contract.

In sub-s. 2 of S. 12 of the Land Acquisition Act, the immediateness of the notice is provided for solely in the interests of the public with a view to ensure that the compulsory acquisition shall be, in all respects, facilitated and completed without delay. When the sub-section directs that the Collector shall give 'immediate notice' it does not confer a right upon the person to such notice as to entitle him to say that a late notice is bad but it imposes a duty upon the Collector in interests of the public, to insure prompt, vigorous action on his part for the speedy determination of all disputes (a).

The word 'notice' as used in cl. (b) of the proviso to S. 13 of the Land Acquisition Act, means notice, whether immediate or not. The clause prescribes one of two periods of limitation for a party, who has accepted the Collector's award—either six weeks from the date of the receipt of the Collector's notice, whether immediate or not, or six months from the date of the receipt of the award, 'whichever period shall first expire.' These last words show that the element of notice is an essential ingredient, so to say, of the two alternative periods whether such notice be immediate or not.

S. 13 of the Land Acquisition Act provides that any person interested, who, not having accepted the award, desires to have an adjudication of his claim by the Court should, within the period of limitation prescribed in the proviso to the section, do certain things: first, he must make written application to the Collector; secondly, that written application should require the Collector to refer the matter for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested; and thirdly, that such application shall state the grounds on which objection to the award is taken. These formalities are matters of sub-

1.—*Imperial Acts.*—(Continued).

Act I of 1894 (Land Acquisition).—(Continued).

stance and their observance is a condition precedent to the Collector's power of reference.

Where a statute or a written contract provides that a certain thing shall be done immediately you must, in construing that word, pay regard to the object of the statute or the contract as the case may be and the position of the parties and the purpose for which the legislature or the parties intend that it shall be done immediately. *In re Land Acquisition Act*, 7 Bom. L.R. 637=30 B. 275.

CHANDAVARKAR, J.

References.—(a) 82 C. 605=7 Bom. L.R. 422 (P.C.); 12 B. 276; (1941) M. and W. 281, 677; (1942) 10 M. and W. 698; (1940) 6 M. and W. 677, *Refd. to*.

(11) Ss. 12, 13, 31, 53—Apportionment—Reference to Court—Dismissal for default—Fresh suit, if maintainable—Rights of persons not parties to the reference—Civ. Pro. Code (Act XIV of 1882), Ss. 102, 103, 647—Construction of Statute—Special jurisdiction.

Certain persons, who were parties in a land acquisition proceeding, being dissatisfied with the apportionment of the compensation-money made by the Collector, obtained a reference to the Court, under S. 13 of the Act, but, as they did not appear at the hearing of the same, it was struck off;

held, that a suit instituted by the same persons in the Civil Court for the apportionment of the compensation-money was barred by Ss. 102 and 103, Civ. Pro. Code.

Ss. 102 and 103, Civ. Pro. Code, apply to proceeding before the Court, to which a reference is made under S. 13 of the Act; owing to the operation of S. 617, Civ. Pro. Code, which is made applicable to such proceeding by S. 53 of the Act.

Persons who were not parties in the land acquisition proceedings were not debarred from instituting a suit for apportionment in the Civil Court.

STEPHEN, J.—*Quere*—Whether persons, who were before the Collector, but not before the Court to which reference was made under S. 13 of the Act, would be debarred from instituting such a suit?

MOONENY, J.—An objection, as to the measurement of the land or the amount of the

I.—Imperial Acts.—(Continued).

Act I of 1894 (Land Acquisition).—(Continued).

compensation payable therefor, must be determined exclusively by a reference to the Civil Court under S. 18, cl. (1) of the Act. But a question, as to the persons to whom compensation is payable or its apportionment among the persons interested, may be determined either under a reference as contemplated by S. 18, cl. (1) of the Act or by a suit at the instance of a person lawfully entitled to it as against another who has drawn the compensation-money. When, however, a party has once availed himself of a reference to the Court under S. 18 of the Act, he cannot again ask for an opportunity to litigate the same matter in the ordinary Court. **Bhandi Singh v. Ramadhin Roy**, 10 C.W.N. 991.

STEPHEN and MOOREHEAD, JJ. "

References.—7 C.W.N. 538, 7 C. 388, at p. 393, 12 C. 33, 11.

(12) S. 15 (2)—Collector—Reference to the Court—Grounds of objection—Claimant can take additional grounds before the Court.

S. 15, sub-sec. 2 of the Act requires that any person interested, who, not having accepted the Collector's award, requires the Collector to make a reference to the Court, "shall state the grounds on which objection to the award is taken." Such requirement is one of the conditions precedent to the obligation of the Collector to make the reference. But, there is no express provision in the Act, which expressly lays down that the claimant in question should be confined to those grounds by the Court in determining his objection. *In the matter of the Land Acquisition Act I of 1894. In the matter of Rustomji B. Jijibhoy*, 7 Bom. L.R. 881=30 B. 341.

CHANDAVARKAR, J.

(13) S. 16—See No. 4, *supra*.

(14) S. 18—See Nos. 4, 10 & 11, *supra*.

(15) S. 18—Award—Reference—Locus standi to ask for reference on the ground of insufficiency of amount awarded—interest in land, if necessary—Person interested—Decision of Collector, power of Court of reference to question—Interlocutory order—Appeal.

Some land, in which one B owned a mourasi mokurrari tenant's interest, was acquired by Government. Previous to the declaration of

I.—Imperial Acts.—(Continued).

Act I of 1894 (Land Acquisition).—(Continued).

the acquisition, one G had entered into a contract with B. Notice of the acquisition, under S. 9 of the Act, was served, amongst others, on G. G alone appeared before the Collector and, on the award being made, applied for a reference under S. 18, on the ground that the amount awarded was insufficient. The Collector made the order asked for. Up till the date of the declaration, no conveyance of B's interest in the land had passed in favour of G. But, some time after the award and the order of reference, B purported to convey all the interest he could claim on account of the land to G. The Land Acquisition Judge held that, under the circumstances, G had no *locus standi* to contest the sufficiency of the award.

Held, that no question of apportionment having arisen, the question whether G had an interest such as would entitle him to any portion of the compensation-money was a matter foreign to the proceeding at that stage. The fact that G had claimed an interest in the compensation money and the Collector had thought that he was a person who could come in as claiming an interest, was sufficient to entitle him to ask for a reference and to appear in support of it.

The order of the Land Acquisition Judge, deciding that G had no *locus standi* to contest the sufficiency of the award, was passed on a petition of objection preferred on behalf of the Government. But the final order confirming the award was made on a subsequent date. Both orders having been appealed against, *held*, that no appeal against the previous order was necessary, nor did an appeal lie from an interlocutory order of its nature. **Gaulstaun J. C. v. Secretary of State**, 10 C.W.N. 195.

MITRA and CASPERSZ, JJ.

S. 18—I, 38, Nos. 6 and 7.

(16) S. 19, reference to the Civil Court under, whether could be made subsequent to award of Collector under S. 151 of the Land Revenue Act—See LAND REVENUE ACT (CENTRAL PROVINCES), No. 2, 2 N.L.R. 172.

* (16-a) S. 23—See No. 6, *supra*.

S. 23—I, Act IV of 1898 (Bombay), No. 2.

(17) Ss. 23 and 24—Assessment of compensation, basis for—Present market-value and not the prospective value after acquisition,

1.—*Imperial Acts.*—(Continued).

Act I of 1894 (Land Acquisition).—(Continued).

The amount of compensation, to be awarded to the owner, for land acquired under this Act, is to be determined with reference to the market-value of the land in view of the use, which it might, at the best, be ordinarily put to, at the time of the publication of the declaration of its intended acquisition and any probable increase in the value of the land, in future, which might accrue from the use to which the land is to be put after its acquisition, must not be taken into consideration in assessing such compensation. **Zulakar Khan v. The Collector of Mianwali**, 90 P. R. 1905=49 P. L. R. 1906.

CHATTERJI, J.

References.—44 P. R. 1904 and 21 P. R. 1905, R.

(18) Ss. 23 cls. 3 and 4, and 49—*Acquisition of portion rendering remainder useless—Compensation—Injurious affection—Severance—Homestead land—"House."*

Where a portion of a holding used for residential purposes was acquired by Government, and it was found that the remaining portion was thereby rendered useless for such purposes.

Held, that it was of very little importance whether the whole holding formed a "house", within S. 49 of the Land Acquisition Act, so as to render it obligatory on Government to acquire the whole of it, inasmuch as compensation to the extent of the value of the entire holding would have to be paid owing to damages caused by severance and to the property being injuriously affected by the acquisition. **Sarat Chandra Bose v. The Secretary of State for India**, 10 C. W. N. 430.

BRETT and MOOREJEE, JJ.

(19) S. 24—See No. 17, *supra*.

(20) S. 26—See No. 5, *supra*.

(21) Ss. 26, 30, 54, award under, is a decree within S. 2 of the Civ. Pro. Code—Order for refund of compensation enforceable by way of restitution in execution—S. 583, Civ. Pro. Code.

In this appeal from the order of a District Judge, refusing to execute an award under Act I of 1894 (Land Acquisition), the respondent contended that an order of the Court, under S. 26 or 30 of the Act, was an award and not a decree and that the same was the case with the order of the Chief Court, on appeal, under S.

1.—*Imperial Acts.*—(Continued).

Act I of 1894 (Land Acquisition).—(Continued).

54 of the Act and, further, that, since the award merely declared the rights of the parties concerned, it was in any case, incapable of execution and must be enforced by a separate suit. Overruling the contention *held*, under the present Act I of 1894, proceedings in Court have been almost entirely assimilated to those of an ordinary civil suit. S. 58 makes the Code applicable generally to all proceedings under the Act, except where inconsistent with anything in the Act itself. An adjudication, therefore, as to compensation or apportionment of compensation, is tantamount to a decree within the meaning of S. 2 of the Civ. Pro. Code, though called an award in the Act (a). Such an award is a decree capable of execution and the same is the case with a decree of the Chief Court passed in appeal and the principle of restitution laid down by S. 583, Civ. Pro. Code, is applicable, enabling the party entitled to benefit under the decree to recover the same by process of execution. **Zamindars of Dhar v. Rana**, 53 P. R. 1906=108 P. L. R. 1906.

CHATTERJI and KENSINGTON, JJ.

References.—(a) 21 A. 354 and 30 C. 501, F., L. R. 8 I. A. 90, R.

(22) S. 30—See No. 21, *supra*.

(23) S. 31—See No. 11, *supra*.

Ss. 32, 54—I, 39, No. 11.

(24) S. 49—See No. 18, *supra*.

(25) S. 50—See No. 5, *supra*.

(26) S. 58—See No. 11, *supra*.

(27) S. 54—See No. 21, *supra*.

(28) S. 54—*Acquisition of inalienable charity properties—Award directing investment in Government securities, maintainability of appeal against.*

The land taken up by Government in this case was the endowment of a family charity and, as such, inalienable and the award made directed the compensation-money to be invested in Government securities. It was the appellant's contention that no order for investment should have been made, the land being alienable. *Held*, an appeal lay against the award so far as regards the direction for the investment, but the land in question was *prima facie* not alienable and the order for investment appealed against was, therefore, rightly made. **Shiva Rao v. Wajappa**, 29 M. 117.

1.—*Imperial Acts.*—(Continued).

Act I of 1894 (Land Acquisition).—(Concluded).

SUBRAHMANIA AYYAR, OFFG. C.J. and SANKARAN NAIR, J.

See, further, I, 40, Nos. 12 and 13.

Act XV 1895 (Crown Grants).

(1) *Object of the Act—Objection to sale in execution—not maintainable.*

Where a decree was passed for sale of property forming part of property granted by the Crown and became final, the judgment-debtor cannot object to the sale of such property in execution, on the ground that the property was not saleable in view of S. 2 of the Act.

By enacting the Crown Grants Act, the Legislature did not intend that unconditional grants, made by the Crown free from restrictions as to alienations, should not be the subject of a sale at the suit of a mortgagee. **Dost Mohammad Khan v. The Upper India Bank, Ltd.**, 3 A.L.J. 628 = A.W.N. (1906), 255.

STANLEY, C.J. and KNOX, J.

(2) *S. 2—Construction of document—Grant of land by Government.*

Section 2 of the Crown Grants Act, 1895, does not render all the provisions of the Transfer of Property Act inapplicable to lands held under grant from the Crown, but the meaning of the section is that when the Court is called upon to construe an instrument granting land by the Crown, it shall construe such grant irrespective of the provisions of the Transfer of Property Act. **Dost Muhammed Khan v. The Bank of Upper India, Ltd.**, A.W.N. (1906), 44 = 3 A.L.J. 129.

BANERJI and RICHARDS, JJ.

See, also, I, Act I of 1869 (*Oudh Acts*), No. 2.

Act IX of 1897 (Provident Funds).

See I, 41.

Act X of 1897 (General Clauses).

S. 10—See CIV. PRO. CODE, No. 175, 9 O. C. 214.

Act VI of 1898 (Post Offices).

See I, 41.

Act II of 1899 (Stamp)—See STAMP ACT.

Act IX of 1899 (Indian Arbitration).

(1) *S. 4—What constitutes written submission—Award made ex parte, if valid.*

To constitute a submission within the meaning of S. 4 of the Indian Arbitration Act, it is not necessary that there must be an agreement

1.—*Imperial Acts.*—(Continued).

Act IX of 1899 (Indian Arbitration).—(Continued).

on a single piece of paper signed by both parties. It is sufficient if the bought and sold notes, containing a term to refer to arbitration, are signed by both parties or their authorised agents. But a mere stipulation inserted by one party and not formally agreed to by the other, does not constitute such a submission (a).

Although the Court will not decree specific performance of an agreement to arbitrate, yet it will enforce an award when validly made (b). *Held*, on the facts of this case, that the award, though made *ex parte*, was valid. **Ram Narain Ganga Bissin v. Lilladur Lowjee**, 10 C.W.N. 814 = 83 C. 1297.

WOODROFFE, J.

References.—(a) 60 L.J. (Q.B.) 640, *Exp.* (b) 25 Q.B.D. 545, *It.*

(2) *Ss. 4 & 20—Clause in a contract empowering reference to arbitration, effect and validity of—Dispute referred to an association—Power to carry out the arbitration by individuals selected by the association—Contract Act IX of 1872, S. 28, Exception 1.*

Application to file an award in accordance with the rules made under S. 20 of the Act. The defendants contended that the awards ought not to be filed by reason of the illegality of the arbitration clause in the contract between the parties; *held*, that such an arbitration clause comes within the definition of a submission to arbitration under S. 4, cl. (4) of the Act and that, therefore, the clause was a perfectly lawful one. Further, the arbitration clause in the contract, is covered by exception 1 to S. 28 of the Indian Contract Act.

Held, further, that, though, where a dispute is referred to the award of a body of persons, who can sit as a tribunal, the arbitrators might not be entitled to delegate their power to individuals, yet where a dispute is referred to an association consisting of a large and fluctuating body of persons, who cannot sit as a tribunal, it must be taken that the parties intend that that body shall carry out the arbitration in the only way in which it is possible to do so, viz., by individuals selected for that purpose. **Ganges Manufacturing Company v. Indra Chand**, 33 C. 1169.

HARRINGTON, J.

1.—Imperial Acts.—(Concluded).

Act IX of 1899 (Indian Arbitration).—(Concluded).

(8) S. 19—*Jurisdiction of High Court to stay proceedings in the Court of Small Causes—Arbitration, reference to.*

The legal proceedings referred to in S. 19 of the Act do not necessarily mean legal proceedings in the High Court alone. S. 19 gives jurisdiction to the High Court to stay proceedings in any Court in the Presidency town subordinate to its jurisdiction. It does not indicate that the legal proceedings contemplated must, in the Presidency town, be proceedings in the High Court, and not any other Court subordinate to it in that town.

Proceedings taken by a party to a suit to stay legal proceedings under S. 19 are not steps "in the proceedings." *Ralli Brothers v. Noor Mahomed*, 8 Bom. L. R. 955.

DAVAR, s.

References :—11 B. 467, 24 C. 778, R.

S. 20—See No. 2, *supra*.

Act XI of 1899 (Court-Fees Amendment).

See, I, *Court Fees Act (VII of 1870)*, No. 15.

Act V of 1902 (Administrator-General and Official Trustees).

See I, 42.

Act IV of 1903 (Provident Funds Act, Amendment).

See I, *Act IX of 1897 (Provident Funds)*, No. 1.

2.—Bengal Acts.

Act X of 1859 (Rent).

(1) S. 10—See Act VIII of 1885 (BENGAL TENANCY), No. 2, 10 C. W. N. 527.

(2) S. 23—*Abatement of rent, suit for—Refund of excess rents—Jurisdiction of Civil and Revenue Courts—Joinder of unwarrantable claims, effect of.*

In a suit brought by a *putnidar* for a declaration that he was entitled to an annual abatement of the *putni* rent, in consequence of some lands comprised in the *putni* having been acquired for the purposes of the railway, and also for the refund of the excess rents which he had been compelled to pay for some years:

Held, per MOOKERJEE, J.—That this was a claim for abatement of rent and for recovery of

2.—Bengal Acts.—(Continued).

Act X of 1859 (Rent).—(Continued.)

damages for illegal exaction of rent within the meaning of cls. (2) and (3); S. 23 of the Act. The proper course for the plaintiff, therefore, was to sue in the first instance for abatement of rent in the Revenue Court, which was the only Court of competent jurisdiction for that purpose.

Per HARINGTON, J.—(contra), treating the case as though it were one of first impression :—Although, under S. 23, a Civil Court had no jurisdiction to entertain a suit for abatement of rent, still the suit, in so far as it related to a claim for refund of excess rents paid by the *putnidar*, was properly cognisable by the Civil Court and should not be dismissed for want of jurisdiction, because one of the steps, which the plaintiff should have to take in establishing his right to have the money repaid to him, would, if it had stood alone, have entitled him to a decree in the Revenue Court.

Per MOOKERJEE, J.—The present suit is substantially one for abatement of rent and the prayer for refund is ancillary to the prayer for abatement, because as soon as the amount of abatement is determined, the amount of refund is deducible by simple arithmetical calculation. The Civil Court has no jurisdiction to allow a claim for abatement and is not competent to embark upon precisely the same enquiry for the purpose of allowing the refund.

Per MOOKERJEE, J.—The following rules are deducible from a review of the authorities on the question :—

(1) A suit for abatement of rent, properly so called, is maintainable only in the Revenue Court (a);

(2) A suit for the adjustment of the rent, on the ground that the rent payable under a lease is less than the sum nominally inserted in it is not a suit for abatement of rent, properly so called, and is accordingly maintainable in the Civil Court (b);

(3) If the tenant is entitled to sue for abatement in the Revenue Court under Rule (1), the suit for refund lies in the same Court, but, if the tenant is entitled to sue for adjustment in the Civil Court under Rule (2), the suit for refund lies in the same Court. The cases, which support the view that a suit for refund lies in the Civil Court, assume a prior determination of the amount of abatement by a Court of competent jurisdiction (c).

2.—Bengal Acts.—(Continued).**Act X of 1880 (Rent).—(Concluded).**

Per MOOKERJEE, J.—A plaintiff cannot give jurisdiction to, or take away jurisdiction from, a Court by an unwarrantable addition to his claim and the jurisdiction of the Court ought to be determined with reference to the nature and value of his claim after the additional matter has been struck out. *Autosh Roy v. Narinarain Singh Das*, 8 C.L.J. 143.

HARRINGTON and MOOKERJEE, JJ.

References.—(a) 1 W. R. 209, R. (b) 1 B.L.R. (F. B.) 98, R. (c) (1864) W. R. Cap. No. (Act X), 46 and 11 W. R. 412, *relied upon*. 16 W. R. 178, *Diss.*

(8) S. 159—*Final order of Collector—Appellate order—High Court's power to interfere in revision.*

S. 159 of the Act does not preclude revision by the High Court of an order of a Collector, which is final within the meaning of that section. *Mohant Gobind Ramanuja Das v. Lakhur Parida*, 11 C.W.N. 112.

BRETT and GUPTA, JJ.

See, also, I, Act VIII of 1885 (Bengal), No. 4

„ „ „ *Res judicata*, No. 19.

Act XI of 1880 (Revenue Sale Law).

(1) *Arrears of Government Revenue, if "debt"—Appropriation of payment by holder of estate for particular kist—Collector, if entitled to credit against previous arrears—Contract Act (IX of 1872), S. 59—Sale-certificate, value of.*

Arrears of Government-revenue are not a 'debt' within the meaning of S. 59 of the Contract Act.

When an amount tendered as the January *kist* was received and credited against arrears due in respect of an earlier *kist* and the estate was then put up for sale on account of arrears due in respect of the January *kist*.

Held, that the Collector acted within his rights in bringing the estate to sale for the arrears of the January *kist*.

Act XI of 1880 is complete by itself.

As the terms of S. 27 of the Act show, the sale-certificate is granted to a purchaser at a sale for arrears of revenue for purposes of evidence, but the title vests in the purchaser from the date of sale. *Munshi Gangi Bishen Singh v. Sheikh Mahomed Jan*, 10 C.W.N. 949 = 88C. 1198.

PRATT and GUPTA, JJ.

2.—Bengal Acts.—(Continued).**Act XI 1880 (Revenue Sale Law).—(Continued).**

Ss. 3, 6, 7, 18, 23, 28, 33—See I, 43.

Ss. 5, 6, 13, 23 and 33—„ 44.

Ss. 5, 6 and 33—„ 44.

Ss. 5 and 28—„ 46.

Ss. 6 and 33—„ 47.

Ss. 7, 18 and 33—„ 48.

(2) S. 37—*Suit for ejectment by purchaser—Occupancy riyat—Defence—Onus—Bengal Tenancy Act (VIII of 1885), S. 21.*

A purchaser of an estate at a revenue sale sued an occupancy *riyat* for the recovery of some lands, which were situate within the ambit of the estate.

Held, that the onus is, in the first instance, on the *riyat* to make out a *prima facie* case that, at the time when the revenue sale took place and the plaintiff purchased the estate, he held the land in suit as a *riyat* within the meaning of the proviso in S. 37 of the Revenue Sale Law or within the meaning of S. 21 of the Bengal Tenancy Act. *Ambika Churn Chakravarti v. Dya Gazi*, 10 C.W.N. 497.

GHOSH and PAKHTEER, JJ.

(3) S. 37—*"Permanent Settlement," meaning of—Suit to avoid tenures—Burden of proof—proof that tenure dates from the Permanent Settlement—Presumption backward.*

Semble—The expressions "permanently settled" and "permanent settlement" in S. 37 of the Revenue Sale Law contemplate the Permanent Settlement of 1793 (a).

In a suit to avoid certain tenures by a purchaser at a revenue sale of an estate, which was once permanently settled in 1793, purchased by Government at a sale under Act I of 1845 and again permanently settled in 1864, the plaintiff contended that these tenures were liable to be avoided unless the defendants proved, by positive evidence, the existence of the tenures from the Permanent Settlement of 1793. The defendants proved that the tenures were mentioned in the Survey *Chitta* of 1869, that they were not avoided on purchase by Government and were again recognised by Government in 1864, that rents had been paid at a uniform rate for at least 30 years, and that there had been sales of the tenures.

Held, that the Court may, and ought to, presume backward and hold that the defendants

2.—Bengal Acts.—(Continued).

Act XI 1859 (Revenue Sale Law).—(Concluded).

have discharged the onus thrown on them by S. 37 of the Revenue Sale Law (b). *Nagendra Lal Chowdhury v. Nasir Ali*, 10 C. W. N. 503.

BODILLY and MITRA, JJ.

References.—(a) 24 C. 887 and 24 W. R. 476, *Refd. to*; (b) 81 I. A. 144=8 C.W.N. 669, F.

S. 37—I, 49 and 50, Nos. 40 and 50.

See 37 & 53—I, 51.

(4) S. 54—Sale for arrears of revenue under the Act, effect of, on mortgage created between date of default and date of sale—Charge on sale-proceeds—See TRANSFER OF PROPERTY ACT, No. 56, 3 C.L.J. 52.

Act III of 1884.

S. 37—See Act III of 1884 (B.C.), No. 2, 3 C.L.J. 370.

Act VIII of 1885.

(1) S. 12—Rent for period subsequent to suit—Sale-proceeds, surplus, charge upon—Priority over attaching creditor—Charge for future rent.

Under S. 12 of Act VIII (B.C.), of 1885, a plaintiff, who has obtained a decree for rent, has no charge over the surplus sale-proceeds for the rent of subsequent period. *Sultan Khan v. Radha Krishna Singh*, 4 C.L.J. 520.

MACLEAN, C. J., and CHIT, J.

Act VII of 1885.

S. 8—See I, Act XI of 1859 (Bengal), Nos. 4 and 6.

Act VIII of 1889 (Rent).

(1) S. 6—Occupancy raiyat, transfer of interest by, in holding—Mortgage girby, usufructuary—Transfer of Property Act (IV of 1889), S. 58 (d)—Sub-lease—Ejectment.

Under the Bengal Rent Law [Act VIII of 1889 (B.C.)], when an occupancy raiyat has executed an usufructuary (girby) mortgage of his non-transferable holding and has allowed the mortgagee to occupy it for such time as the loan remains unpaid, without the permission of his landlord, the transaction can in no sense be regarded as a sub-lease, but it is an encroachment and a transfer of the raiyat's interest in the holding, and as such, a breach of the condition under which he holds the land. Under such circumstances, the landlord is entitled to take back possession of the land

2.—Bengal Acts.—(Continued).

Act VIII of 1890 (Rent).—(Concluded).

comprised in the holding. *Krishna Chandra Dutt Chowdhury v. Miran Bajania*, 3 C.L.J. 222=10 C.W.N. 429.

PRINSEP and HANDLEY, JJ.

(2) S. 7—See Act VIII of 1885 (BENGAL TENANCY), No. 66, 33 C. 186=10 C. W. N. 533.

See, also, I, Act VIII of 1885 (Bengal

*Tenancy), No. 4 and Civil

Pro. Code, No. 13.

Act V of 1870 (Port Commissioners).

(1) S. 38—Acquisition of land for public purpose—Public highway—Dedication.

Where land was acquired by the Secretary of State, at the instance of, and for, the Port Commissioners and was, on their paying for it, conveyed to them by him to be held by them as trustees for the public purpose, for which it had been acquired.

Held, the public purposes referred to were the purposes of one or more of them of the Port Commissioners' Act. In mentioning that the land was to be laid out in the construction of a road, the notification simply stated one of the particular purposes, for which land might be acquired for a public purpose, as those words are to be understood in the said Act.

Quære: Whether the Port Commissioners have the power, having regard to the terms of this Act, to dedicate a road to the public?

In order to constitute a valid dedication to the public of a highway by the owner of the soil, there must be an intention to dedicate, of which user by the public is evidence and no more (a). *K. K. Shelly Bannerjee v. The Commissioners of the Port of Calcutta*, 3 C. L.J. 585=38 C. 1243. *

WOODROFFE, J.

Reference.—(a) 11 M. and W. 827 at p. 880, *It.*

Act VI of 1870 (Chowkidari).

(1) S. 48—Chowkidari Chakran I. and—Transfer of resumed land—Right of Zemindar within whose estate lands geographically situated—Right of zemindar with whom settlement made under Reg. VIII of 1793, S. 41.

S. 48 of Act VI (B. C.) of 1870 does not require that chowkidari chakran lands should be transferred to the zemindar of the estate, within which they are geographically situated,

2.—Bengal Acts —(Continued).

Act VI of 1870 (Chowkidari).—(Concluded). But to the zemindar of the estate to which the lands appertain and of which they form a part and parcel. **Pratab Narain Mukerjee v. The Secretary of State for India in Council**, 10 C. W. N. 637=3 C.L.J. 580=38 C. 890.

MACLEAN, C.J. and GEIDT, J.

Ss. 48-51, 58-61 and 64—See I, Chaukidari Chakran Lands, No. 2.

(2) *Ss. 50, 55—Resumption and transfer to zemindar—Chaukidari land, if part of estate—Purchaser of estate at revenue-sale—Title to Chaukidari land—Regulation VIII of 1793, S. 41.*

When *chaukidari chakran* land is resumed and transferred to the zemindar under S. 50 of Act VI of 1870 (B. C.), such land becomes detached from the parent estate, and the zemindar holds it under a different title from his other *malguzari* lands.

A purchaser of the parent estate at a revenue sale acquires no title in the resumed *chaukidari* land.

S. 41 of Reg. VIII of 1793 has been impliedly repealed in districts or parts of districts, to which Bengal Act VI of 1870 has been made applicable. **Kashim Sheikh v. Prasunno Kumar Mukerjee**, 10 C. W. N. 508=33 C. 596.

MITRA and ORMOND, JJ.

(3) S. 55—See No. 2, *supra*.

Act VI of 1876 (Chota Nagpur Encumbered Estates).

(1) *Grant by a disqualified proprietor—Ratification.*

An owner of an estate granted a *khorphosh* lease in respect of a portion of his estate, when such estate was under the management of an officer under the Act.

Held, that, although he was incompetent to grant such a lease at the time of grant, yet, subsequently, when he ratified it after the disability ceased, it became a valid grant. **Roy, R. C. v. Thakur Ram Jiwan Sing**, 10 C.W.N. 149=33 C. 363.

MACLEAN, C.J. and MITRA, J.

(2) S. 3—*Suit for land—Specific performance—Agreement to lease—Suit by purchaser—Jurisdiction—Such debts and liabilities—Appeal—Competency to Contract—Perpetuities, law against.*

2.—Bengal Acts.—(Continued.)

Act VI of 1876 (Chota Nagpur Encumbered Estates).—(Concluded).

A suit for specific performance of an agreement to grant a *putni* lease and for possession of the land covered by the lease is maintainable in the Court of the Subordinate Judge, within the local limits of whose jurisdiction a portion of the land, that might be covered by the lease, lies (a).

The expression 'such debts and liabilities' in S. 3 of the Act means debts and liabilities other than those in favour of Government and includes every other debts or liabilities (b).

An appeal in a suit to enforce an agreement outstanding, when the estate is taken over by Government, is, therefore, barred.

When a suit is compromised by the proprietor of an estate, taken charge of by the Government under the Act, such proprietor is not *sui juris* and not competent to enter into an agreement to grant a lease of any portion of his estate, at a time when the estate might be released by Government, and such an agreement cannot, therefore, be enforced, even if it had been embodied in the decree drawn up by the Court in terms of the compromise. Such agreement, moreover, is bad as infringing the law against perpetuities, as the estate might not have been released within the period limited by that law. **Jagadis Chandra Deo Dhabal v. Satrugan Deo Dhabal**, 4 C.L.J. 238=33 C. 1065.

BRETT and GUPTA, JJ.

References.—(a) 19 C. 858, 1 C. 249, 2 C. 445 and 5 C. 82, F. (b) 20 C. 609, F.

Act VII of 1876 (Land Registration).

(1) *Ss. 56, 89—Dispossession.*

The rejection of an application for registration under the Land Registration Act, does not necessarily constitute dispossession so as to entitle the defeated party to maintain a suit for recovery of possession; the effect of the order may be merely to entitle the party to sue for declaration of his title. **Shyamanand Das v. Raj Narain Das**, 4 C.L.J. 568.

RAMPINI and MOOKERJEE, JJ.

(2) S. 89—See No. 1, *supra*.

Act VIII of 1876 (Estates Partition).

(1) *Joint landlords—Partition—Effect on holding—Division of holding—Act V of 1897 (Bengal), S. 81.*

2.—Bengal Acts.—(Continued).

Act VIII of 1876 (Estates Partition).—(Concluded).

An estate having been partitioned between the plaintiff and his co-sharers under Act VIII of 1876 (Bengal), a portion of a holding, which, formerly, appertained to the joint estate fell within plaintiff's share:

Held, that the partition had the effect of dividing the holding, so that the plaintiff became the sole landlord with regard to the portion of the holding that fell within his share of the estate (a).

Act VIII (B. C.) of 1876, whilst it did not provide for the division of holdings, did not also contain any prohibition against such division. *Protab Chandra Das v. Kamala Kanta Shaha*, 10 C. W. N. 818.

RAMPINI and WOODROFFE, JJ.

References—(a) 5 C. 278, 26 C. 832, *It.*, 1 C. W. N. 160 and 161, 2 C.L.J. 369, D.

Ss. 9, 24, 26, 149—See *I, Estates Partition Act (VII of 1876), B. C., No. 1.*

(2) S. 116—Order excluding lands from partition-suit to direct partition of lands excluded—See *LIMITATION Act*, No. 45, 33 C. 698.

See, also, I, Limitation Act, No. 56.

Act I of 1879.

No second appeal lies from an order passed in execution under—See *APPEAL (SMOOND APPEAL)*, No. 1, 10 C.W.N. 284=33 C. 378.

Ss. 135, 136, 137 and 144—*I, 54. S. 34*—See *I, 53.*

Act IX of 1879 (Court of Wards).

(1) S. 6. cl. (c) and (d)—See *ACT XXXV of 1858 (LUNATICS)*, No. 1, 4 C.L.J. 115.

(2) *Ss. 14 and 39*—*Lease granted by a manager without the order of Court void or voidable.*

Per RAMPINI, J.—Under *Ss. 14 and 39* of the Court of Wards Act, the manager has a *prima facie* right to grant a lease and it must be presumed that he has the sanction of the Collector and such a lease cannot be void and inoperative.

Per MOOKERJEE, J.—If a question is raised whether, in renewing a lease, a manager under the Court of Wards acted under, or without the orders of the Court, it must be found whether there is in fact, an order made by the Court in the particular case.

2.—Bengal Acts.—(Continued).

Act IX of 1879 (Court of Wards).—(Concluded).

A lease granted by a manager without the orders of the Court is not void but only voidable at the option of the ward. *Uma Churan Mahaldar v. Narendra Nath Basu*, 10 C.W.N. 126=33 C. 278.

RAMPINI and MOOKERJEE, JJ.

(3) S. 39.—See No. 2, *supra*.

Act VI of 1880 (Drainage).

(1) *Ss. 43 cl. (b) and 44, sub-sec. (1)*—*Landlord and tenant—Drainage charges, recovery of, by landlord—Limitation—Bengal Tenancy Act VIII, of 1885, Sch. III, cl. (2), S. 3, Cl. (5)—“Rent”—Waiver of statute by contract—Validity—Limitation, running of, from date other than that on which amount payable.*

A suit to recover drainage charges payable by a tenant to his landlord under S. 42 cl. (b) and S. 44, sub-sec. (1) of the Bengal Drainage Act is governed by cl. (2) of Sch. III of the Bengal Tenancy Act and must be brought within 3 years from the last day of the Bengali year in which the sum claimed fell due.

Drainage charges payable by the tenant to the landlord as above are included within the definition of “rent” in S. 3, sub-sec. (5) of the Bengal Tenancy Act (a).

Although a sum of money may be payable on a specified date, the limitation for the recovery thereof need not necessarily run from that date.

It is lawful for parties to substitute for their statutory obligation under the Drainage Act a contractual obligation.

Held, in the present case, that the contract merely amounted to a covenant by the tenant to pay drainage charges in accordance with the statute and did not modify or supersede its provisions (b), *Nasser Chandra Majle v. Jyoti Kumar Mukerjee*, 11 C.W.N. 57.

RAMPINI and MOOKERJEE, JJ.

References:—(a) 8 C.W.N. 640, *Expl. and F.* (b) 32 C. 1019, *Appr.*, 19 C. 1, *R.*

Ss. 42 and 44 B—*I, 55.*

S. 43—“ ” “

(2) S. 44, Sub sec (1)—See No. 1, *supra*.

2.—Bengal Acts.—(Continued).

Act VII of 1880 (Public Demands Recovery).

- (1) S. 17—Powers of revision of the Commissioner and the Board of Revenue—Certificate sale, setting aside—Certificate issued under the Cess Act (B.C., IX of 1880)—Limitation—Deciding case in a party's absence—Proper remedy.

Bengal Act VII of 1880, for the recovery of public demands, applied to cases of road and other cesses (a).

Where a Commissioner set aside a sale held in execution of a certificate granted by the Deputy Collector, in respect of a fine imposed for failure to comply with a notice under S. 16 of the Cess Act, on the ground that the evidence for the petitioner made out a *prima facie* case of fraud, or at any rate of irregularities which prevented the petitioner from obtaining the knowledge of the proceedings against him, and caused the sale of his estate at the most inadequate price.

Held, that the power of revision conferred on the Commissioner by S. 17 of the Act VII of 1880 (B. C.), was amply sufficient to justify the order setting aside the sale.

The Board of Revenue, also, had power to interfere in this case under S. 24 of the Act.

S. 17 of Act VII of 1880 (B. C.), applied to orders made after, as well as before, sales in execution of certificates issued under the Act.

The periods of limitation applicable, in ordinary cases, were not binding on the Commissioner when he was acting in exercise of his revisional jurisdiction.

It is an elementary principle, which is binding on all persons, who exercise judicial or quasi-judicial powers, that an order should not be made against a man's interest without there being given him an opportunity of being heard.

In this case, the order of the Commissioner annulling the sale was challenged in a regular suit, brought in a Civil Court, on the ground that the order was made without hearing the purchaser.

Held, that the proper remedy of the purchaser was to apply to the Commissioner for a rehearing. *Babu Lalitwar Singh v. Mohunt Ram Kishan Das*, 10 C.W.N. 969 (P.C.) = 4 C. L. J. 177 = 16 M.L.J. 365 = 8 Bom. L. R. 719 = 3 A.L.J. 689 = 1 M. L. T. 308 = 33 C. 1178.

LORD DAVEY, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

Reference.—(a) 14 C. 1, R.

2.—Bengal Acts.—(Continued).

Act IX of 1880 (Bengal Cess).

- (1) S. 16—See Act VII of 1880 (B.C.) Public Demands Recovery, No. 1, 10 C.W.N. 969.

- (2) S. 41, scope of—Bengal Tenancy Act (VIII of 1885), S. 74—Road cess—Abwab.

A contract by which a tenant, as between himself and his landlord, undertakes to pay the whole road-cess, is not illegal.

S. 41 of the Cess Act is neither exhaustive nor prohibitive and does not invalidate such a contract.

Road-cess is not an *abwab* within the meaning of S. 74 of the Bengal Tenancy Act. *Ashutosh Das v. Amir Mollah*, 3 C.L.J. 387.

MACLEAN, C. J. and BANERJEE and STEPHEN, JJ.

Reference.—4 C. 576, F.

Act III of 1884 (Bengal Municipality).

- (1) S. 80—See BURNING GRANT, No. 1, 10 C. W. N. 1044.

- (2) S. 363—Act III of 1864 (B.C.), S. 87—Limitation.

There is no difference between S. 87 of Act III (B.C.) of 1864 and S. 363 of III (B.C.) of 1884. As the former section, so also the latter, is applicable only in those cases where the plaintiff claims damages or compensation for some wrongful act committed by the commissioners or their officers. In the exercise, or the honestly supposed exercise, of the statutory powers. In cases other than these, S. 363 has no application. *Shudhangshu Bhusan Roy Chowdhury v. Rajay Kall Roy Chowdhury*, 3 C.L.J. 376.

MACLEAN, C. J. and CASPARIS, J.

Reference.—6 C. 8, F.

Act VIII of 1885 (Bengal Tenancy).

- (1) Sec. 2, 11, 17, 88—Sub-division of tenure—Transfer of a share of a permanent tenure—Validity.

Where the holder of a permanent tenure transferred a portion of it, and the transferee held that portion separately and was allowed to pay proportionate rent for the same to the landlord for a great many years.

Held, that, upon sale by the transferee of that portion of the tenure, his liability for rent to the landlord ceased.

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

His act did not have the effect of sub-dividing the tenure. *Kali Sundari Debes Chaudhurani v. Dharani Kanta Lahara Chaudhuri*, 10 C.W. N. 272.

GHOSH and PARCITER, JJ.

S. 3 (2)—I, *Res judicata*, No. 19.

(2) S. 3, cl. 4 and S. 179—*Abwabs*—Permanent tenure-holder under lease created before the Act—Stipulation to pay the price of three cocoanuts and render one day's personal service, over and above rent if enforceable—Reg. V of 1812, S. 3—Act X of 1859, S. 10.

Abwabs are not recoverable from a permanent tenure-holder under a lease created before the Bengal Tenancy Act came into operation.

They could not be recovered under Reg. V of 1812 and Act X of 1859, and cannot be recovered under S. 179 of the Bengal Tenancy Act, owing to the operation of cl. (4) of S. 2 of the Act. *Apurna Churn Ghose v. Kasam Ali*, 16 C.W. N. 527 = 4 C.L.J. 527.

GHOSH and PARCITER, JJ.

(3) S. 3—Government-revenue paid by *patnidar*, not "rent" within its meaning in S. 3 of the Act—See REGULATION VIII OF 1819 (BENGAL), No. 4, 3 C.L.J. 7.

S. 3 (5)—I, *Landlord and Tenant*, No. 9.

S. 3 (9)—I, 56, No. 3.

S. 3 (10) and S. 21— " " No. 4.

Ss. 3 and 171— "—57, No. 5.

S. 7— " *Rent*, No. 1.

(4) S. 11—See No. 1, *supra*.

(5) Ss. 11, 17, 28—Transfer of tenure piecemeal, if sub-division—Liability of transferor for rent.

Where a *dur-patnidar*, to the knowledge of his landlord, transferred a portion of the *dur-patni* to one person on one date, and the remainder to another person on a subsequent date,

Held. (MACLEAN, C.J., *dubitante*)—That, after the second transfer, the liability of the *dur-patnidar* for rent ceased and the two transferees became jointly and severally liable to the landlord for the same (a).

MACLEAN, C.J.—The act of the *dur-patnidar* in transferring the tenure piecemeal had the effect of dividing the tenure contrary to the

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued.)

provision of S. 28, Bengal Tenancy Act. *Kishori Raman Kapuria v. Ananta Ram Laha*, 10 C.W.N. 270.

MACLEAN, C. J. and GEIDT, J.

References.—(a) 16 C. 642, 19 C. 17 and 4 C.W.N. 590, *Refd.* to.

(6) S. 12—Transfer of occupancy tenure, effect of tenant's liability to pay rent—Validity of transfer essential, to pass the liability to the transferee.

In this suit to recover arrears of rent, the Court of First Instance found that nothing passed on the sale, effected by the defendants, which was only colourable and *benami* and that they, therefore, continued liable even after the sale. The Lower Appellate Court held a contrary view on the ground that, since the tenure was a transferable one, its transfer by a registered *Kobala* was sufficient to discharge the defendants from their liability to pay rent. *Held*, that the cases (a) relied on by that Court did not relate to transfers, which were colourable and *benami* and simply showed that a valid transfer, under S. 12 of the Act, operates to discharge the transferor from his liability to pay rent and to pass such liability to the transferee. But, in order to give such effect to the transfer, it should be a valid one and not colourable and *benami*. *Joy Gobind Laha v. Monmotha Nath Banerjee*, 38 C. 580.

MITRA and GEIDT, JJ.

References.—(a) 16 C. 642 and 19 C. 17, D.

Ss. 15 and 16—I, 58.

(7) S. 17—See Nos. 1 and 5, *supra*.

(8) Ss. 20 and 21—Right of occupancy, acquisition of—Acquisition of right of a settled raiyat—Presumption under S. 20, cl. 7—

To show that a raiyat has, under S. 21 of the Bengal Tenancy Act, acquired a right of occupancy in a holding, it is not sufficient to show that he has got other occupancy holdings in the same village; what is required to be shown is whether the tenant is a settled raiyat or not within the meaning of S. 20, and has, as such, acquired a right of occupancy in the jote in dispute.

Per RAMPRASAD, J.—An occupancy right may be acquired by purchase but the right of a settled

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

raiyyat can be acquired only by a continued holding of land in the village for twelve years. The presumption under cl. 7 of S. 20 of having held the land for twelve years, arises only when the other occupancy holdings are held under the same landlord. **Kuldip Singh v. Chatur Singh Ray**, 3 C.L.J. 285.

MACLEAN, C.J. and RAMPINI, J.

See, also, I, Res Judicata, No. 19.

- (9) *Ss. 20 and 180—Presumption under S. 20 in case of dearah or chur land, inapplicability of, to S. 180—Regulation XI of 1825, S. 4—Necessity of subsisting rights in the land to entitle tenants to its accretions.*

The lower Court had decided, in this case, that there was a presumption, under S. 20 of the Act, that the tenants (the respondents) had acquired occupancy rights in that part of the land in question (which was described as the *lagan* land) by having held it for a period of twelve years or more and that they were entitled to occupy also the other part (styled the *wasilat* land) which had accreted to the *lagan* land. *Held*, the lower Court was wrong in holding that the presumption created by S. 20, in respect of that section, could be applied to the case of the above *lagan* land which formed the *dearah* land mentioned in S. 180 of the Act. The presumption in S. 20 is stated to be for the purpose of that section and it cannot be extended for the purpose of S. 180, and that being so, the ordinary rule of law, would obtain namely, that the person, who alleged that he had been for twelve continuous years in possession, would have to prove that allegation.

As to the position of the respondents with regard to the later accretion, the *wasilat* land, it was argued on their behalf that, under the provisions of S. 4 of Regulation XI of 1825, they were entitled to the *wasilat* land, as having accreted to the *dearah* land, of which they were tenants, but it was *held* that that section had no application to the tenants having had no pre-existing right in the *dearah* land to which the accretion had to be regarded as attaching. **Beni Pershad v. Chaturi Tewary**, 33 C. 444 = 4 C. L. J. 63.

HARINGTON and PRATT, JJ.

- (10) S. 21. In a suit by a purchaser at a revenue sale against an occupancy raiyat, onus is on the

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

latter to show that, at the time of the sale, he was, a raiyat within.—*See* ACT XI OF 1850 (BENGAL), No. 2, 10 C.W.N. 497.

- (11) S. 21—*See* No. 8, *supra*.

- (12) *Ss. 22, 49 (b) and 85 (2)—Under-raiyyat, ejectment of—Notice to quit.*

If a landlord (permanent tenure-holder) purchases from his occupancy raiyat title and interest in the holding by a deed of sale, he cannot, by virtue of such purchase, eject the under raiyat, who was let into the land by the occupancy raiyat, without serving him a notice to quit under S. 49 (b) of the Act, even if the subletting was made without the landlord's consent and otherwise than by a registered instrument. **Amirulla Mahomed v. Nazir Mahomed**, 3 C. L. J. 155.

GHOSE and PARGITER, JJ.

References.—28 C. 205, *Distd.* 31 C. 932, *Appr.*

- (13) *S. 22, cl. (3)—Occupancy-right, acquisition by purchase—Acquisition of occupancy-right by statutory method.*

S. 22, cl. (3) of the Act only prevents the acquisition of occupancy-rights by an *ijaradar* or farmer of rent by the statutory method under the Act itself, but he can acquire such right by purchase. **Ramrup Mahto v. H. Manners**, 4 C. L. J. 209.

MACLEAN, C. J. and PRATT, J.

S. 22—I, 59.

Ss. 22, 49, 85 and 86—I, 59.

Ss. 25, 155—I, 60.

- (14) *Ss. 25 and 178—Landlord and Tenant—Denial by tenant of landlord's title followed by decree of Court operates as forfeiture—See LANDLORD and TENANT, No. 1, 3 C. L. J. 201.*

- (15) *S. 28—Zuriheshgi lease—Lease for cultivation—Occupancy, right of, whether can arise—*

Neither of the cases 24 C. 272 and 2 C. W.N. 752 is authority for the proposition that a raiyat, by taking a *zuripeshgi* lease of land, of which he was previously or then put in possession as a raiyat, loses his *raiyyati status* or divests himself of his right to acquire a right of occupancy in the land.

Held, on the terms of the present lease, that it was a cultivating lease and that the lessee did,

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

by 12 years' continuous possession, acquire a right of occupancy over the leased land. **Ramdhar Singh v. M. H. Mackenzie**, 10 C. W.N. 851.

RAMPINI and CASPERSZ, JJ.

(16) *S. 29—Conversion of money rent into rent in kind—Enhancement of rent—Leaving evidence out of account—Question of law—Second appeal.*

The conversion of *nakuli* rent into *bhadi* rent is not necessarily an enhancement of rent. The one is rent in money, the other that in produce. They relate only to the medium by which the rent was payable—produce or money. The produce would be a varying quantity and in years of drought would be very little or nothing.

Where a first appellate Court leaves out of account an important piece of evidence not realizing the significance of it, this would be a point of law for a second appeal. **Hussan Kuli Khan v. Nakohhedi Nonia**, 33 C. 200.

PRATT and GEINT, JJ.

S. 29 (b)—Pror. 1 to S. 29—1, 61.

(17) *Cl. (b) and proviso (3) of S. 29—Kabuliat removal in, of stringent conditions in former lease—Improvements by landlord, whether could justify enhancement of rent—Evidence as to improvement, whether admissible under S. 91, Evidence Act.*

Suit for a declaration that the *Kabuliat* executed by the plaintiff was void, since it was not binding on the plaintiff for the reasons that the rent had been thereby enhanced by more than two annas in the Rupee and that he executed the *Kabuliat* under coercion and undue influence. Defendants, in their answer, justified the enhancement by setting up the fact of improvement made by them by the excavation of the canal such as was contemplated in proviso (2) of S. 29 of the Act. They, further, pleaded that there were stringent conditions in the former lease and since the above enhancement of rent was agreed upon by the plaintiff in consideration of avoiding those stringent conditions from the *Kabuliat* in question, the enhancement was not improper.

On appeal, the District Judge held that the question of improvement set up by the defendants could not be gone into, evidence regarding

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

the same being inadmissible under S. 91 of the Evidence Act.

Held, on second appeal, that the lower appellate Court ought to have gone into the questions, whether there was any 'improvement' within the meaning of the Act, effected by the landlords, and whether the plaintiff had agreed to the enhanced rent in consideration of such improvement, since the fact that the writing between the parties contained no reference to any such improvement could not render inadmissible evidence sought to be let in on the point. The consideration for a contract being different from the 'terms of such contract', in proof of which alone S. 91 of the Evidence Act, lays it down that no evidence shall be given, that section cannot prevent the defendants from giving extraneous evidence as to the consideration.

Held, also, that the mere fact, that certain stringent conditions, which had found a place in the previous lease were omitted from the present *Kabuliat* was not such a circumstance as could justify any enhancement of rent, much less an enhancement, as in the present case, at the rate of more than two annas in the Rupee (a) and that the *Kabuliat* in question was, therefore, void for having contravened the provisions of cl. (b) of S. 29 of the Bengal Tenancy Act. **Probat Chandra Gangapadhyay v. Chirag Ali**, 33 C. 607. 4 C.L.J. 320 = 11 C.W.N. 62.

MITRA and ORMOND, JJ.

References.—(a) 18 C. 333 and 28 C. 90, *Distd. Ss. 30, 50 and 181—1, 61.*

Ss. 48, 29 (b), 85—1, Civil Pro. Code, No. 13.

(18) *S. 49 (b)—See No. 12, supra.*

(19) *S. 50—Presumption—Landlord and tenant—Ejectment.*

Where a landlord brings a suit for ejectment on the allegation that his tenant, who had a non-transferable holding, has sold it to a third person (one of the defendants) and has abandoned the holding.

Held, that S. 50 of the Act has no application to such a case. **Sarat Chandra Ghose v. Shyama Chand Singha**, 10 C.W.N. 930.

RAMPINI and MOOKERJEE, JJ.

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

(30) *Ss. 50 and 52—Enhancement of rent, suit for—Enhancement, grounds of exemption from—Onus—Report of Commissioner not challenged in the first Court, should be accepted as correct.*

When a tenant claims exemption from enhancement of rent, under S. 50 of the Act, the onus lies on him to prove that he has held the tenure at a rent or rate of rent, which has not been changed from the time of the Permanent Settlement, or for 20 years or more preceding the suit.

When the report of the Commissioner, as to the prevailing rate of rent, was not challenged by either side in the first Court, and was acted upon by it without further corroborative evidence, the Lower Appellate Court ought not to have gone behind that report and examined the materials on which the report was founded and come to a different finding, without allowing the parties opportunity to adduce evidence in support of, or to rebut, it. *Govinda Priya Chowdhurani v. Ratan Dhupl*, 4 C.L.J. 37.

GHOSE and PARGITER, JJ.

S. 57—I, Limitation Act, No. 116.

(21) *S. 52—See No. 20, supra.*

S. 52—I, 62.

Ss. 52, 178 and 179—I, Landlord and Tenant, No. 46.

(22) *Ss. 58, 59, 67—Interest—Rent.*

The word "rent" does not necessarily include interest; so if any sum of money be paid by a tenant to a landlord as rent, and the latter receives it as such, he cannot be permitted to apply that money towards any interest, which might then be due (*a*) *Bhagabati Debya Chowdhurani v. Basanta Kumari Debi*, 11 C.W.N. 101.

GHOSE, C.J., and CASPERSZ, J.

References.—25 C. 571 and 23 C. 575, B.

(22-a) *S. 50—See No. 22, supra.*

Ss. 61 and 63—I, Civil Pro. Code, No. 61.

Ss. 61 and 182—I, 63.

(28) *S. 65—Suit to enforce a Kistbundi or instalment-bond—arrears of rent—consideration for bond—Nominal owner, authority of, to pledge property in arrears of rent.*

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

Where one of two defendants, the father, allows his son, the other defendant, to take the lease of an under-tenure in his name from the plaintiff, who is well aware that the father is the real owner of the under-tenure and the son is only his *benamidar*, the plaintiff-landlord is entitled to look to the son, the recorded tenant, for the due payment of the rent and if the under-tenure falls into arrears, the landlord may sue the recorded tenant, the son, and obtain a decree for rent, which would be operative against the property in the hands of the father, the beneficial or real owner. But it is not competent to the recorded tenant, the son, to create a charge or mortgage on the property, in the event of the rent falling into arrears in favour of the landlord. If the beneficial or real owner fails to pay the rent regularly, the nominal owner has no implied authority to pledge the property in arrears, the creation of such a charge being neither necessary for the purposes of the tenancy nor usual for the management of tenancy.

When, therefore, a landlord accepts an instalment-bond, creating either a charge or security on the property for the arrears of rent, from the nominal owner with full knowledge of the true ownership, he cannot be permitted to follow the property in the hands of the true owner (*a*).

A suit instituted on a *Kistbundi* or instalment bond, part of the consideration for which was arrears of rent, is a suit not for rent but for money due under the contract, *viz.*, the instalment-bond, by which, in lieu of the original liability, a new liability was substituted, and the plaintiff can have no charge on the land under the Tenancy Act. *Royuddi Sheikh v. Kritarthanath Mukherjee*, 4 C.L.J. 219=38 C. 985.

RAMPINI and MOOKERJEE, JJ.

Reference.—(a) 15 A. 304, D.

S. 65—I, Contract Act, No. 21.

(24) *Ss. 65, 148, 170—Decree for rent—Execution—Claim under S. 278, Civ. Pro. Code (Act XIV of 1882)—Admissibility—Landlord's interest in tenure sold after decree—Decree, if continues to be a first charge on tenure.*

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

When the plaintiff in a suit for rent is shown to have been the landlord at the date of the suit and also at the date of the decree, both suit and decree would clearly be a suit and a decree under the Bengal Tenancy Act.

As provided in S. 170 of the Bengal Tenancy Act, no claim can be preferred under S. 278, Civ. Pro. Code, when such a decree is put in execution.

The fact that the plaintiff sold his interest in the tenure subsequently to obtaining the decree, would not prevent him from obtaining the benefit of S. 65 of the Act (a). **Khetra Pal Singh Roy v. Kritartha Moyi Das**, 10 C. W.N. 547 (F.B.) = 3 C.L.J. 470 = 33 C. 566.

MACLEAN, C.J., GHOSE, RAMPINI, SALE, and PHATT, JJ.

Reference.—(a) 3 C.W.N. 604, *overruled*.

(25) *Ss. 65, 159—Sale in execution of a decree for arrears of rent at the instance of a co-sharer landlord—Interest of unrecorded tenant how far affected.*

An occupancy holding was recorded in the landlord's books in the names of N, B and T, as tenants. Plaintiff purchased the interest of N and B. The validity of his purchase was established. Subsequently, one of the co-sharer landlords brought a suit against N, B, and T, for his share of the rent and got a decree; in execution of the decree, the holding was sold and purchased by the 1st defendant.

Held, that the 1st defendant purchased only the right, title and interest of the judgment-debtors. **Afriz Mollah v. Kulsumannessa Bibee**, 10 C.W.N. 176 = 4 C.L.J. 68.

RAMPINI and MOOKERJEE, JJ.

(26) *Ss. 65, 178, 179—Permanent tenure holder—Ejectment for non-payment of rent, contract illegal.*

A contract in contravention of S. 65 of the Bengal Tenancy Act, under which the tenant of a permanent tenure makes himself liable to be ejected upon failure of payment of rent is bad in law, even though Ss. 178 and 179 are inapplicable. **Samant Radha Charn Das v. Ananta Prasad Das**, 4 C. L. J. 521.

MACLEAN, C.J., and MOOKERJEE, J.

(26-a) S. 67—See No. 22, *supra*.

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

S. 67—I, 64.

Ss. 67 and 179—I, 64.

(27) *Ss. 67, 178 (3) (h)—Abwab—Puja expenses—Road-cess, if abwab—Interest, at rates higher than 12 p.c., contract to pay, if enforceable—Un-conscionable contract.*

Puja kharaaj or expenses for a *Puja* agreed to be paid in excess of the rent is an *abwab* and cannot be enforced.

Road-cess is not an imposition on the tenant by the landlord in addition to the rent but a tax imposed by Government and it does not come within the definition of an *abwab* contained in S. 74 of the Act.

A contract to pay more than the proportion payable by the tenant under the Road Cess Act is not illegal (a).

The provisions of S. 178 (3) (h) are applicable to the case of a *kabuliyat* executed after the passing of the Act.

Parties ought not to be allowed to nullify the effect of S. 178, sub-section 3, cl. (h) by contracting themselves out of the provisions of S. 67 of the Act, which limits the interest to simple interest at 12 p. c. *per annum*, by the device of making the rent payable otherwise than quarterly.

A contract made after the passing of the Bengal Tenancy Act is not enforceable in so far as it provides for payment of interest at rates higher than 12 per cent (b).

Even if it were open to the parties to contract themselves out of the provisions of S. 67 of the Act, a contract to pay interest at the rate of 75 p. c., for arrears of rent payable for land, for which arrears the landlord has good security in the holding, on which these arrears are a first charge and which he can recover in other ways, is an unconscionable one and is one which ought not to be enforced. **Narendra Kumar Ghose v. Gora Chand Poddar**, 3 C.L.J. 981 = 38 C. 688.

RAMPINI and MOOKERJEE, JJ.

References.—(b) 4 C. 576 and 3 C.L.J. 337, *It. (b)* 22 C. 214, *Exp. and D.*

Ss. 69 & 70—I, 64.

S. 70 (cl. 5)—I, 64.

(28) S. 74—See ACT IX OF 1880 (BENGAL CESS), No. 2, 3 C.L.J. 337.

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

S. 84—I, 64.

(29) S. 85 (2)—See No. 12, *supra*.

See, also, I, *Civil Pro. Code*, No. 13.

(30) S. 87—*Ejectment, suit for—occupancy raiyat, sale by—non-transferable right of occupancy—Abandonment, what amounts to—Possession of original tenant—Khas possession—Sub-lease from purchaser—*

Mere sale of a right of occupancy to a third person, notwithstanding that the vendors remain in occupation of the land under a sub-lease from the purchaser, does not amount to abandonment in law and the landlord is not entitled to re-enter by ejecting the original tenants. **Madar Mandal v. Mahima Chandra Mazumdar**, 3 C.L.J. 343=39 C. 531.

MITRA and GEIDT, JJ.

References.—9 C.W.N. 379 and 9 C. 648, F. 22 W.R. 22, R. 4 C. 925 and 24 C. 212, D.

(31) S. 88—*Sub-division of tenancy—Rent receipts how far evidence of sub-division—Joinder of parties—Wrongly adding a person as a defendant.*

Receipts for rent granted separately by the landlord's Tahsildar to the tenants of a holding, whose names were also entered in the landlord's *sherista* in the place of that of the tenant, who held the tenancy before them, do not amount to a consent in writing on the part of the landlord to a sub-division of the tenancy within the meaning of S. 88 of the Bengal Tenancy Act (a).

The Tahsildar, who granted the receipts separately, cannot be added as a defendant in the landlord's suit for rent brought jointly against the tenants. **Sri Maharani Beni Pershad Koeri v. Ramdahin Pandey**, 10 C. W.N. 216.

RAMPINI and CASPERZ, JJ.

References.—(a) 25 C. 531 (F.S.)=2 C.W.N. 375, *Distd.* 31 C. 1026=8 C.W.N. 923, *Appl.* 6 C.W.N. 823, *Refd. to*.

(32) S. 88—*Separate collection of rent by co-sharer landlords from under-tenants—Joint suit for rent against intermediate tenant—Fraud—Effect of a decree for rent.*

Where several co-sharer landlords, who had been collecting the rent due to them, separately

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

from the *dar mourashidars*, united in bringing an action against the intermediate *mourashidars* for arrears of rent, so as to obtain a decree which would be binding upon and would pass the tenure;

held, that the landlords were not bound to continue to collect rent in this manner unless they had given their consent in writing under S. 88 of the Act, and that the action of the landlords in bringing a joint action did not amount to fraud. **Girish Chandra Mukhopadhyaya v. Chatradhar Ghose**, 3 C.L.J. 379.

RAMPINI and MOOKERJEE, JJ.

(33) S. 88—See Nos. 1 and 5, *supra*.

(34) S. 93—*Common Manager—Consent, order by—Civil Procedure Code (Act XIV of 1882), S. 375.*

A District Judge has no jurisdiction to appoint a common manager under S. 93 of the Bengal Tenancy Act by consent of parties. Before he can make the order, he must find that there is a dispute likely to cause inconvenience to public or injury to private rights existing between the co-sharers.

Quære: Whether a proceeding under S. 93 of the Bengal Tenancy Act is a suit within the meaning of S. 375 of the Civil Procedure Code? **Kali Charan Ash v. Parbati Charan Ash**, 4 C. L.J. 564.

RAMPINI & MOOKERJEE, JJ.

(35) Ss. 93, 95—*appointment of a successor to a common manager.*

Having once made an appointment of a common manager, under S. 95 of the Bengal Tenancy Act, it is not open to the District Judge to appoint a successor to the manager on his resignation. **Dwarka Nath Mitra v. Bankutesh Lal Mitra**, 10 C.W.N. 497.

STEPHEN and MOOKERJEE, JJ.

(36) S. 95—See No. 85, *supra*.

Ss. 101 to 107—I, 65.

Ss. 102, 104—I, *Act III of 1888 (Bengal)*, No. 1.

(37) Chap. X, S. 103—*Record-of-rights—Khewat—Prima facie evidence.*

If there is no settlement of rent under Chap. X of the Bengal Tenancy Act, the entry in the record-of-rights, if it was duly published, would

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

be only *prima facie* evidence in favour of the landlord—evidence which may be rebutted by the tenant. **Abdul Rasheed v. Jogesh Chandra Roy**, 11 C.W.N. 158.

GHOSE & PARGITER, JJ.

(38) *Ss. 103 A, 107, 106 A and 109 A—Second appeal—Landlord's application for assessment of fair and equitable rent.*

On an application by a landlord, under S. 105 of the Act, a settlement-officer settled a fair and equitable rent, and the Special Judge, on appeal by the tenant, confirmed that decision. The tenant preferred a second appeal. On a preliminary objection of the landlord, that no second appeal lay, *held* that, under S. 109 A, no second appeal lay. **Ram Bishen Raut v. Rajaram**, 33 C. 882.

HARINGTON and PRATT, JJ.

(39) *Ss. 103 A, 104 E, 104 H and 111 A—Rent, suit for—Dismissal of objection under S. 104 E for default, not a judicial order—Record of rights, final publication of, under S. 103 A, sub-sec. (2)—S. 104 H and 111 A, whether bar to a suit for rent—Res judicata.*

An order striking off a petition of objection under S. 103 A of the Act for default is not a judicial order; nor does it operate as *res judicata* in a subsequent suit for rent brought by the objector, against the recorded tenant (*a*).

The first part of S. 111 A of the Act prohibits suits which seek to take undue advantage of mere technical defects in the procedure leading up to, or involved in, the settlement proceedings.

The section further prohibits the alteration of rent once settled, except to the extent allowed by S. 104 H, and the proviso, in virtue of which suits of a declaratory nature may be brought, cannot be read as prohibiting suits for the recovery of arrears of rent alleged to be due from tenants.

S. 104 H of the Act is designed mainly to safeguard the Government revenue and to attach reasonable finality to the fixation of the rental assets upon which the assessment of revenue is based. It does not bar a suit like the present brought against the recorded tenant for rent due. **Nasarulla Mia v. Amiruddin**, 3 C.L.J. 188.

MITRA and CASPERSE, JJ.

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

Reference.—(a) 28 C. 471, *R*.

(40) *Ss. 103 a (2), 103 B, 104 a, 104 J—Entry in a record-of-rights—Rebuttable presumption.*

Where, in a certain *khevat* finally framed and published under S. 103 A (2) of the Act, it was stated that certain persons were joint holders of a tenure;

held, that the entry was correct until the contrary was proved and that this presumption was rebutted when it was shewn that the tenants had, for 60 years, separately held possession of their respective plots on payment of separate rents. **Rajnarain Mitra v. Anant Tarai**, 10 C.W.N. 908.

MACLEAN, C.J. and MOOKERJEE, J.

(41) *Ss. 103 a, 111 a—Draft Record of Rights, objection to—Entry made on objection—Final publication of Record of rights—Presumption as to correctness of entry.*

The final publication of the Record of Rights merely raises a presumption of the correctness of the entry and it is not necessary to bring a suit to avoid a presumption.

Nature of remedy under S. 111 A of the Bengal Tenancy Act, discussed. **Ramgulam Singh v. Bishnu Pargash Narain Singh**, 11 C. W. N. 48.

MITRA & HOLMWOOD, JJ.

(42) *Sec. 103 B—Presumption—Record of rights, entry in and publication of—*

The presumption referred to in S. 103 B of the Bengal Tenancy Act is applicable to a suit, which has been instituted before the publication of the record of rights in which the entry is contained. **C. R. Macdonald v. Babu Lal Purbi**, 4 C. L. J. 519.

MACLEAN, C.J., BODILLY & MOOKERJEE, JJ.

(43) S. 103 (B)—No. 40, *supra*.

(44) S. 104 (A)—See No. 40, *supra*.

(45) S. 104 (E)—See No. 39, *supra*.

(46) S. 104 (H)—See No. 39, *supra*.

(47) S. 104 (J)—See No. 40, *supra*.

Ss. 104 (2), 407—I, Res judicata, No. 19.

(48) S. 105—See No. 38, *supra*. •

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

- (49) *Ss. 105, 109 (3)—Second appeal—Decision settling a rent.* meaning of—*Ss. 30, 37, 52, 104, 109 and 113—Act III (B.C.) of 1898.*

The words, "not being a decision settling a rent" in S. 100 (3) of the Tenancy Act, refer not only to a decision, by which existing rents are varied, but also to a decision, by which existing rents are maintained as fair and equitable. The words, "settle a fair and equitable rent", in S. 105 (1) do not exclude a case in which the existing rent is not varied.

When, therefore, a special Judge on appeal from the decision of a Settlement Officer, on an application by the landlord under S. 105 (1), holds that no case has been made out for an enhancement of rent on any of the grounds stated in the application. *Held*, that this is a decision settling a rent within the meaning of S. 109 (3) of the Act, and, consequently, no second appeal lies to the High Court from this decision (a).

Ss. 37, 105 and 113 of the Act discussed with reference to the question as to what is meant by a settlement of rent. Rameswar Singh v. Bhoooneswar Jha, 4 C.L.J. 188 = 33 C. 837.

MITRA and ORMOND, JJ.

References.—(a) 16 C. 596, 17 C. 326 and 25 C. 146, R.

(50) S. 106 A—See No. 38, *supra*.

Ss. 107 and 109—I, 66.

(51) S. 109 A—See No. 38, *supra*.

(52) S. 109 (3)—See No. 49, *supra*.

(58) S. 111 A—See Nos. 39 and 41, *supra*.

S. 116—I, *Res judicata*, No. 19.

Ss. 116, 120 (2) and 178—I, 67.

(54) S. 148—See No. 24, *supra*.

S. 148 (h)—I, 68, 69.

Ss. 149, 153—I, 69.

(55) *Ss. 153—Suit for rent including Road and Public Works Cess—Verbal assignment (barat) by putnidars of their liability to pay rent to the superior landlord, effect of.*

Where, in a suit for rent, certain cesses are claimed as part of that rent, and the Courts decide whether such cesses are payable or not, a second appeal lies, as the decree has decided 'a

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Continued).

question of the amount of rent annually payable by a tenant' (a).

Where, under a verbal arrangement existing for a long time, a *darputnidar* has been paying the rent due to the superior landlord from the *putnidar*, it is not open to the *putnidar*, so long as the arrangement subsists, to sue the *darputnidar* for the full amount of the rent and treat the assignment as non-existing. *Debandra Prasad Ghose v. Parash Nath Mitter, 4 C.L.J. 119.*

RAMPINI and GEIDT, JJ.

References.—(a) 16 C. 639 and 20 C. 254, F.

S. 153—I, 79.

S. 153—I, *Civil Pro. Code*, No. 145.

S. 153—I, 70 and 72.

(56) S. 159—See No. 25, *supra*.

(57) *Ss. 159, 161, 166—See TRANSFER OF PROPERTY ACT, No. 43, 33 C. 876.*

S. 169—I, 71.

(58) S. 161—See No. 57-a, *supra*.

(59) S. 166—See No. 57, *supra*.

(60) S. 167—*Rent-sale—Annulment of mortgage by notice—Right of mortgagee to apply to set aside sale.*

The service of notice under S. 117 of the Act annulling a mortgage is no bar to the mortgagee making an application to set aside a sale of the tenure. *Brij Kumar Roy v. Dhanukdhari Raut, 10 C.W.N. 976.*

PRATT and ORMOND, JJ.

See, also, I, 72 and 73.

(61) S. 170—See No. 24, *supra*.

(62) S. 177, sub-sec. (3)—*Purchaser of a tenure, right, to deposit decretal amount of, —Interest of purchaser void or voidable.*

When a tenure is advertised for sale, the purchaser of the tenure has no right to make a deposit under sub-sec. (3) of S. 170 of the Act and prevent the sale, as he is not a person having an interest in the tenure voidable upon the sale.

Where a tenure was advertised for sale and the purchaser of the tenure from the tenant, against whom the decree for rent was obtained, was allowed by the lower Court to deposit the decretal amount under sub-sec. (3) of S. 170

2.—Bengal Acts.—(Continued).

Act VIII of 1886 (Bengal Tenancy).—(Continued).

of the Act to prevent the sale, the High Court on revision did not set aside the order on the ground that, on a former occasion under similar circumstances, the purchaser had made a similar deposit and the decree-holder had withdrawn the deposit. **Jotindra Mohan Tagore v. Durga Dabe**, 10 C. W. N. 438.

HENDERSON and CASPERZ, JJ.

S. 173 (Sub. S. 3)—I, 73.

(63) S. 174—Sale, setting aside—Deposit—Miscalculation by an officer of the Court.

Where, upon setting aside a sale under S. 174 of the Act, it was found that the amount of deposit fell short of the amount required to be deposited under the law, but that this was owing to a mistake in calculation by the officer of the Court, who ordinarily supplied such information, and it appeared that the Chief Ministerial Officer of the Court had also signified his approval of the information by signing the challan.

Held—That this was a case in which the High Court ought not to interfere. **Sheik Fakir v. Beraj Mohini Dasl**, 11 C. W. N. 116.

BRETT and GUPTA, JJ.

References:—26 C. 449, D., 18 C. 255, R., 25 C. 216, P.

S. 174—I, Civil Pro. Code, No. 197.

(64) S. 173—See Nos. 14 and 26, *supra*.

(65) S. 178 (1), cl. (a) and (3) cl. (a)—Acquisition of permanent occupancy right—agreement before the Act, effect of—Landlord and tenant—Suit in ejectment—Notice to quit—Act VIII of 1869 (Rent), S. 7.

Plaintiff, as the transferee of a landlord's rights, sued for *khas* possession of certain lands. Long before the Bengal Tenancy Act came into force, a certain agreement had been come to between the first defendant's mother, and the original landlord, whereby the former recognised the right of the latter as landlord, agreed to pay rent to him during her life, provided for re-entry of the latter, after the former's death, and wound up by stating that none of her heirs or descendants would object to the re-entry of the landlords after her death. The 1st defendant was also a party to this agreement. First defendant's mother having died, plaintiff, as the assignee of the original landlord's rights,

2.—Bengal Acts.—(Continued).

Act VIII of 1883 (Bengal Tenancy).—(Continued).

sued the 1st defendant and another person, who was in possession as a trespasser. The defence contended that it was not competent for 1st defendant to enter into the agreement she did and that, no notice to quit having been given, the suit was not maintainable. *Held*, that the agreement was a perfectly legal and valid one, under S. 7 of Act VIII of 1869, which was the law then in force, that, even assuming that Bengal Tenancy Act would apply, there was nothing in S. 178 of that Act debarring a tenant from entering into such a contract with the landlord; that the contract was not within the prohibitory terms of sub-s. (3), cl. (a) or sub-s. (1), cl. (a) of that section. The agreement only barred the acquisition of an occupancy right during the executant's life which was not one in perpetuity. *Held*, also, the defendants not having been recognised as tenants, they were mere trespassers not entitled to any notice to quit. **Baul Chandra Chakravarti v. Nistarini Debi**, 33 C. 196 = 10 C.W.N. 533.

RAMPINI and MOOKERJEE, JJ.

(66) S. 178, sub-s. (1), cl. (a) and sub-s. (3), cl. (a)—Contract stipulating re-entry on raiyat's death—validity—Act VIII of 1869 (B.C.), S. 7—See No. 65, *supra*.

(67) S. 178 (3) h—See No. 27, *supra*.

(68) S. 179—See Nos. 2 and 26, *supra*.

(69) S. 180—See No. 9, *supra*.

S. 181—I, 74 and I, Chowkidari Chakran Land, No. 1.

(70) S. 182—Homestead land of raiyat—Occupancy right.

It is not required by S. 182 of the Act that a tenant in occupation of homestead land should be a *raiya*t in the village, in which the homestead land is situated, nor is it necessary for him to be the tenant under the same landlord as the landlord of the homestead land. **Kripa Nath Chakrabarty v. Sheikh Anu**, 10 C. W. N. 914 = 4 C.L.J. 332.

RAMPINI and MOOKERJEE, JJ.

(71) S. 183—See CO-SHARERS, No. 1, 10 C.W. N. 787.

(72) Sch. III, Art. 2 (b)—Rent suit, limitation—Limitation Act (XV of 1877), Sch. II, Art. 132.

2.—Bengal Acts.—(Continued).

Act VIII of 1885 (Bengal Tenancy).—(Concluded).

Where there is a special rule of limitation prescribed by law, that rule is to be followed to the exclusion of the more general rule.

In suits for rent, the period of limitation is that prescribed by Art. 2 (b) of Sch. III of the Bengal Tenancy Act, and it cannot be extended by the application of the ordinary rules of limitation prescribed by the Limitation Act. **Kali Charan Bhowmik v. Harendra Lal Roy**, 4 C.L.J. 558.

MITRA and GEIDT, JJ.

(78) Sch. iii, Art. 6 and S. 185 (sub-s. 2)—See LIMITATION ACT, No. 22, 3 C.L.J. 947.

See, also, I, 74.

Act XII of 1887 (Bengal Civil Courts).

(1) S. 17—Jurisdiction—Appeal—Transfer of a local area from one district to another—See APPEAL (GENERAL), No. 5, A.W.N. (1905), 199.

(8) S. 19—See ACT VII OF 1887 (SUITS VALUATION), No. 1, 9 A.L.J. 260.

(8) S. 21—Valuation of suit—Withdrawal of part of claim—Appeal.

A suit was filed in the Court of a Subordinate Judge asking for two reliefs, which, in the aggregate, were valued at over Rs. 10,000, but the second of which was valued at Rs. 4,485-15-0. After the issues were settled, the plaintiffs withdrew their claim for the first relief. The suit was tried in respect of the second relief claimed and was dismissed. *Held*, that an appeal lay, not to the District Judge, but to the High Court. **Jaggi Lal v. Gopi Narain**, A.W.N. (1906), 57 = 3 A.L.J. 196.

BAKERJI and RICHARDS, JJ.

(4) S. 21—Appeal, form of—Partition suit—Valuation for jurisdictional purposes.

In a suit for partition, the value of the entire estate sought to be partitioned and not the value of the plaintiff's share in the property, is to be taken as the value of the original suit, within the meaning of S. 21 of the Act.

Where, therefore, in a suit for partition, the value of the entire estate is above Rs. 5,000, but that of the plaintiff's share is below that amount, an appeal shall lie, from the decree of the Subordinate Judge, direct to the High Court. **Miraj Mohai Dasi v. Ghintamani Dasi**, 3 C.L.J. 197 = 10 C.W.N. 565 (foot-note).

MAQLEHAN, C.J. and BAKERJEN, J.

2.—Bengal Acts.—(Continued).

Act XII of 1887 (Bengal Civil Courts).—(Concluded).

See, also, I, Civil Pro. Code, No. 44.

(5) Ss. 29, 23—Withdrawal, by District Judge of a suit—Re-transfer of the same—Powers of District Judge.

When once the District Judge withdraws a suit to his own file for trial, he is not competent to re-transfer it again to the Court from which the case has been withdrawn. **Ramacharithter Ray v. Bidhata Ray**, 10 C.W.N. 902.

PRATT and ORMOND, JJ.

(6) S. 23—See No. 5, *supra*.

Act I of 1896 (Public Demands Recovery).

S. 10—I, 77.

Ss. 10, 12, 15, 16, 21 and 31—I, 76.

S. 10, 19—I, 75.

(1) Ss. 10, 31—Notice, service of—Suit to set aside sale—Sale, confirmation of—Certificate, issue of, if cures defect in service of notice—Notice, how to be served.

Service of notice, under S. 10 of the Public Demands Recovery Act, is essential for the validity of a sale held under the Act, and such service of notice, under S. 10, must be effected in conformity with the provisions of S. 31 of the Act (a).

A defect in the service of such a notice cannot be cured under S. 8 of Act VII of 1896 (B.C.), by the grant of the certificate of sale to the auction purchaser (b). **Ramrup Sahai v. Kushal Misser**, 3 C.L.J. 290.

MOOKERJEE, J.

References.—(a) 1 C.W.N. 516, 4 C.W.N. 586, and 5 C.W.N. 86, 6 C.W.N. 680, *Refs. to* and *F.* (b) 26 C. 414, 6 C.W.N. 688, *Dist.*

(2) Ss. 15, 17, 19, 20 and 31—Certificate, validity of—Service of notice—Limitation—suit to set aside a sale in execution of a certificate—Civil Procedure Code, S. 244.

Under the Public Demands Recovery Act I of 1905 (B.C.) as amended by Act I of 1897 (B.C.), S. 19, S. 244 of the C. P. Code is applicable to, and bars, a separate suit when the only grounds alleged for setting aside the sale are irregularities, not in the proceedings anterior to decree or in the decree which is sought to be executed, but in the execution proceedings subsequent to the decree.

2.—Bengal Acts.—(Continued).**Act I of 1895 (Public Demands Recovery).—(Continued).**

The law has changed subsequent to the decision of the cases of 29 C. 94 and 6 C. W. N. 881 (a).

Semble—The mere fact that a greater sum is claimed as due in the certificate, than what is really due, does not make the certificate and notice bad and does not prevent the running of time against the debtor provided that the notice was duly served. In serving the notice, the procedure proscribed by S. 81, should be strictly followed. *Umadali Bhuya v. Rajlakshmi Debua*, 1 C.L.J. 588=10 C.W.N. 130=88 C. 84.

BRETT and WOODROFFE, JJ.

Reference.—(a) 6 C.W.N. 690, *Exp.*

(8) S. 17—See No. 2, *supra*.

(4) S. 19—See No. 2, *supra*.

S. 19 (2)—I, 73.

(5) Ss. 19, 20 and 21—Suit to set aside sale in execution of certificate—Maintainability of suit in Civil Court—See JURISDICTION (OF CIVIL COURTS), No. 2, 3 C.L.J. 285=10 C.W.N. 347=88 C. 451.

(6) S. 20—See Nos. 2 and 5, *supra*.^{*}

(7) Ss. 20, 21—Civil Procedure Code (Act XIV of 1882), Ss. 223, 224, 244, 311, 312—Setting aside sale—Irregularity—Right of suit.

A certificate for recovery of cesses was made by the Comm. Collector of Burdwan against the plaintiff and other persons, who were all residents of that district; the major portion of the property, in respect of which the certificate was made, was also situated within the jurisdiction of the Burdwan district; the certificate was, however, ordered to be sent to Birbhum for execution and an intimation was sent that the demand was to be realised by the sale of the debtor's interest in a certain *mouzah* in Birbhum. The Birbhum Court, thereupon, held the sale.

Held, in a suit to set aside the sale, that the sending of the certificate for execution to the Birbhum Court was not authorised under S. 223, C.P.C., and, consequently, the subsequent proceedings were not legal and the sale cannot stand;

That the suit was not barred by S. 312, Civ. Pro. Code.

2.—Bengal Acts.—(Concluded).**Act I of 1895 (Public Demands Recovery).—(Concl'd).**

Sec. 812, C.P.C., does not apply to execution proceedings held under the Public Demands Recovery Act. *Girish Chandra Chaudhary v. Gelam Karim*, 10 C.W.N. 347=3 C.L.J. 285=88 C. 451.

MACLEAN, C.J. and GRIFFITH, J.

Reference.—20 C. 73, *relied on*.

(8) S. 21—See Nos. 5 and 7, *supra*.

(9) S. 81—See Nos. 1 and 2, *supra*.

Act I of 1897 (Amending Act I of 1895).

See under ACT I OF 1895 (BENGAL).

Act V of 1897.

S. 81—See ACT VIII OF 1876 (ESTATES PARTITION, BENGAL), No. 1, 10 C.W.N. 818.

Act III of 1898 (Amending Act VIII of 1895). See I, 80.**Act III of 1899 (Calcutta Municipality). I, 80.****Act I of 1903.**

S. 1—I, Act VIII of 1865 (Beng. Tenancy), No. 34.

3. Bombay Acts.**Act XX of 1839 (Haks).**

See I, 81.

Act II of 1864.

The provisions of—make the Court of the Resident of Aden subject to the superintendence of the High Court of Bombay—See LETTERS PATENT (BOMBAY), No. 3, 3 C.L.J. 5.

Act XIV of 1869 (Bombay Civil Courts).

S. 22—See CIV. PRO. CODE, No. 26, 8 Bom. L.R. 516.

Act I of 1874 (Bombay Tramways).

I, 81.

Act III of 1874 (Bombay Yatan).

S. 4—See I, Pensions Act XXIII of 1871, No. 1.

S. 9—I, 82.

Act III of 1876 (Bombay Mamlatdars' Courts).

(1) Possessory suit—Injunction—Disobedience of the injunction—Power of the Mamlatdar to punish for contempt of Court.

A Mamlatdar deciding a possessory suit under the provisions of the Act has not the

3.—Bombay Acts.—(Continued).

Act III of 1876 (Bombay Mamlatdars' Courts). —(Continued).

power as a Court to commit to prison for contempt of Court for failure to carry out an injunction. **Rafji Khandu Chambhar v. S. B. Fraser**, 8 Bom. L.R. 638.

JENKINS, C.J. and BEAMAN, J.

- (3) *Possessory suit—Suit against Collector—Mamlatdar's jurisdiction to entertain the suit.*

A Mamlatdar's Court, under Bombay Act III of 1876, has no jurisdiction to try a suit to which a Collector is a party. **Motilal Virchand v. The Collector of Ahmedabad**, 8 Bom. L. R. 904 (F. B.)

RUSSELL, AG. C.J., and ASTON, BEAMAN & HEATON, JJ.

Reference:—28 B. 760=1 Bom. L.R. 414, qualified.

- (3) Mamlatdar's Court has no jurisdiction to try suit to which Collector is a party—Sec No. 2, *supra*.

- (4) *Ss. 4 and 5—Injunction—Jurisdiction to grant injunction when the issues are framed under S. 15 (a).*

The plaintiff owned two pieces of land, between which was the land of the first defendant. To pass from one piece of his land, on which stood the plaintiff's house, to another, which was his field, the plaintiff used to pass through the defendant's land. The defendant then put up a shed at the one end of the plaintiff's passage in his land and a cactus fence at the other end. The plaintiff, thereupon, adopted proceedings under the Bombay Mamlatdars' Courts Act, 1876, asking the defendants to remove the cactus and the shed and to make the passage clear and unobstructed as before. The Mamlatdar raised the issues indicated in S. 15 (a) of the Act: but rejected the plaint on the ground that, inasmuch as the first paragraph of S. 4 of the Act does not mention the words "the use of roads or customary ways to fields," he had no jurisdiction to grant to the plaintiff any relief.

Held, that the Mamlatdar had jurisdiction, under S. 4, to grant an injunction in case of obstruction or disturbance to the use of roads or customary ways to fields. A deprivation of an use is a disturbance. The Mamlatdar was, therefore, in error in supposing that the terms in which the statutory issues are framed for a

3.—Bombay Acts.—(Continued):

Act III of 1876 (Bombay Mamlatdars' Courts). —(Concluded).

case where the plaintiff does not aver deprivation of an use, deprive the Mamlatdar of the jurisdiction to try the issues, and give such relief as he has jurisdiction to give under the second paragraph of S. 4 of the Act. **Bhaw Mangesh Wagle v. Ahmedbhoy Halibhoy**, 8 Bom. L.R. 312.

RUSSELL and ASTON, JJ.

- (5) S. 5—Sec No. 4, *supra*.

- (6) S. 17—*Decision of the mamlatdar—Duty of Mamlatdar—Limitation Act (XV of 1877).*

Where a Mamlatdar's decision, in a possessory suit, instituted under the provisions of the Mamlatdars' Courts Act, 1876, awards possession, S. 17 of the Act imposes on him the duty to issue an order to the village officers to give effect thereto. The duty is in no sense conditional on an application being made to the Mamlatdar for the purpose; it is absolute and unqualified.

Where an imperative duty of the character above set forth is imposed upon a Court, then the Limitation Act, 1877, has no application (a). **Babaji Khanduji v. Kushaba Ramaji**, 8 Bom. L.R. 218=30 B. 415.

SIR LAWRENCE JENKINS, C.J. and ASTON, J.

References.—(a) 4 M. 172; 6 B. 586; 7 B. 316 and 8 B. 377, F.

Act X of 1876 (Revenue Jurisdiction).

See I, 89.

Act VII 1878 (Forest).

Ss. 3, 4 & 10—See I, 414.

Act Y of 1879 (Bombay Land Revenue Code).

- (1) Ss. 56, 57, 153—*Arrears of assessment—*

Non-payment by Khotedar—Lands in possession of a holder under mortgage—Forfeiture of lands for non-payment of assessment—Re-grant of the lands to the holder by the Government—Relations between the original mortgagee and holder.

Forfeiture ordinarily implies the loss of a legal right by reason of some breach of obligation.

When arrears of assessment are levied by sale, then S. 56 of the Bombay Land Revenue Code, 1879, in pursuance of an obvious policy, empowers the Collector to sell "freed from all tenures, incumbrances and rights created by

3.—Bombay Acts.—(Continued).

Act V of 1879 (Bombay Land Revenue Code). —(Concluded).

the occupant...or any of his predecessors-in-title or in any wise subsisting as against such occupant." Should the Collector otherwise dispose of the occupancy, the section affords no such protection; and the legal relations must be determined by reference to the ordinary law. So judged, the effects of a forfeiture and subsequent acquisition of the forfeited property are subject to the control of equities arising out of the conduct of the parties. **Amolak Banechand v. Dhendi Khandu Bhoale**, 8 Bom. L. R. 360 = 20 B. 466.

JENKINS, C.J. and BATTY, J.

(2) S. 57—See No. 1, *supra*.

(3) S. 153—See No. 1, *supra*.

S. 203—I, *Civil Pro. Code*, No. 13.

Act XVII of 1879 (Dekhan Agriculturists' Relief).

(1) S. 2—*Agriculturist—Assignee of Government assessment—Inamdar*.

A man is not excluded from being an agriculturist merely because he may happen to be assignee from Government of assessment, if, in fact, he, by himself or by his servant or by the tenants, earns his livelihood wholly or principally by agriculture.

An Inamdar, even if he be, as Inamdar, merely an assignee from Government of assessment, still may earn his livelihood wholly or principally by agriculture in respect even of the land included within the limits of Inam. Thus, an Inamdar, who is merely an assignee of Government revenue, may also have occupancy rights in respect of the lands over which he has these Inam rights. It is clear that an Inamdar may have occupancy rights and in respect of those occupancy rights there may arise an income which would make the person, who, also happens to be an Inamdar, an agriculturist, within the meaning of the Dekhan Agriculturists' Act, 1879. **Purshotam Murlidhar v. Sitaram Balkrishna**, 8 Bom. L. R. 606.

JENKINS, C. J. and BEAMAN, J.

(2) S. 12, *application of, to pending suits—Taking of accounts—Procedure—Retrospective effect*.

S. 12 of the Act, so far as it makes it obligatory on the Judge to take accounts, is purely a matter of procedure and has retrospective ef-

3.—Bombay Acts.—(Continued).

Act XVII of 1879 (Dekhan Agriculturists' Relief).—(Continued).

fect, **Pannalal Vrajilal v. Kajunhanu Yant**, 8 Bom. L. R. 798.

JENKINS, C. J. & BEAMAN, J.

S. 17—I, 83.

(3) Ss. 15 B, 20—*Cir. Pro. Code (Act XIV of 1882), S. 320—Decree—Execution—Execution transferred to Collector—Partial execution—Application for instalments—Limitation Act (XV of 1877), Art. 175*.

A decree was passed for the sale of the mortgaged property and the execution was transferred to the Collector. The Collector sold some of the mortgaged property and ordered the rest to be sold. In the meantime, the Dekhan Act having been made applicable to the District, the judgment-debtor applied for instalments.

Held (1) that S. 20 of the Act does not apply to mortgage decrees:

(2) that the proceedings subsequent to the decree absolute for sale are proceedings under a decree for sale, within the meaning of S. 15 B, and, therefore, payment by instalments can be decreed.

(3) that the application having been made within one month after the Act came into force the point of limitation did not arise. **Mancherji v. Thakordas**, 8 Bom. L. R. 963.

RUSSELL, C.J., and BEAMAN, J.

References :—23 B. 644 (652), and 7 B. 392, R.

(4) S. 15 (b)—*Decree for redemption—Payment of instalments—Failure to pay the instalments—Directions consequent upon the failure*.

In a redemption decree, passed under the provisions of the Dekhan Agriculturists' Relief Act, 1879, the subordinate Judge made the decretal amount payable by instalments: and further ordered on failure to pay any two successive instalments, defendant do recover the whole amount due by sale of the mortgaged property and the deficiency, if any, from the plaintiffs personally. On appeal, the High Court annulled the above order and substituted in its place the following directions: 'If the sum payable under the direction aforesaid is not paid when due, then defendant will be at liberty to apply to the Court for such order as he may be entitled to under S. 15 (b), sub-s. 2 of the

3.—Bombay Acts.—(Concluded).

Act XVII of 1879 (Bekhan Agriculturists' Relief).—(Concluded).

Bekhan Agriculturists' Relief Act. **Pandharinath Sakharan v. Shankar Narayan Joshi**, 8 Bom. L. R. 488.

JENKINS, C.J. and JACOB, J.

(4-g) S. 20—See No. 3, *supra*.

(5) S. 44—Conciliation-agreement, filing of—Decree of Civil Court—See Act XXIII of 1871 (Pensions), No. 7, 8 Bom. L. R. 659.

(6) Necessity for legislation in the matter of documents executed by agriculturists, as regards admission of oral evidence unfettered by S. 92 of the Evidence Act—See EVIDENCE ACT, No. 21, 8 Bom. L. R. 553.

Act I of 1880 (Khoti).

(1) Ss. 6, 9—Occupancy tenants—Khot-Mortgage by the occupancy tenant—Rights of khot.

There is no authority for saying that an occupancy tenant, whose tenancy is not determined, forfeits his tenancy, by parting temporarily with the possession of his land (a) to another, without resigning the land as completely as would be necessary in the case of privileged occupants of another sub-class, to place the land at the disposal of the khot.

And, so long as his tenancy is not determined, the land is not at the disposal of the khot. And the khot cannot claim to treat the person in possession under a right derived from the occupancy tenant either as trespasser; even as a yearly tenant, so long as the privileged occupant's rights remained undetermined by resignation, lapse or duly certified forfeiture. **Tena bin Ram Belya v. Sukharam Gopal Sans**, 7 Bom. L. R. 941 = 80 B. 290.

RUSSELL and BATTY, JJ.

References.—(a) 20 B. 78, *Refd. to*.

(2) S. 9—See No. 1, *supra*.

Act IV of 1886 (Bombay City Improvement). I, 84-87.

4.—Madras Acts.

Act XXVII of 1886 (Boundary).

I, Forest Lands, No. 1.

Act II of 1884 (Madras Revenue Recovery).

(1) S. 38, cl. (3) and S. 39—Certified purchaser at revenue-sale being a mere benamidar, effect of, on rights of the real purchaser.

4.—Madras Acts.—(Continued).

Act II of 1884 (Madras Revenue Recovery).—(Continued).

Where, on the sale of lands, under the Act, for arrears of Revenue, the name of the purchaser at the sale has been published in pursuance of S. 39, such proclamation cannot so vest the property absolutely in such purchaser as to render it impossible for any one subsequently to contend, successfully, that the said certified purchaser was a mere benamidar and that the real purchaser was some one else. **Muthu sanyal v. Sinna Samarasanyal**, (a) in which it has been laid down that "there is nothing in the above provisions of the Act, that expressly prevents a person from claiming as a purchaser at a revenue-sale on the ground that he is the real purchaser and that the certified purchaser was only a benamidar" *approved* (a), **Narayana Chettiar v. Chokkappa Mudaliar**, (b) overruled and **Mussumat Buhans Kowar v. Lalla Buhooree Lall** (c) followed. **Narayanasaami Padayachi v. Govindasaami Padayachi**, 1 M.L.T. 294 = 29 M. 478.

WHITE, C. J., SUBRAHMANYA AYYAR and BENSON, JJ.

References.—(a) 28 M. 526; (b) 25 M. 655; (c) 14 M.I.A. 406, *It*.

(2) S. 39—See No. I, *supra*.

(3) Land registered in plaintiff's name, but belonging to and in the possession of the defendant—Voluntary payment of kist by plaintiff—Suit to recover kist amount—Contract Act, S. 62.

Where plaintiff sued to recover from defendant the amount paid by him, on account of the revenue due in respect of certain land, which stood registered in his name, but which belonged to the defendant and was in the latter's possession when money was paid, and it appeared that the plaintiff, taking advantage of his name being on the register, objected to the defendant being allowed to pay the kist, and insisted on the money being received from himself, *held*, that the payment by the plaintiff was voluntary and he could not recover the amount under the Revenue Recovery Act, as the payment was not made by him to obtain the release of the land from attachment, made or threatened, and as he was not a tenant, mortgagor or incumbrancer, as required by S. 85 of that Act. **Raja Sallappa Reddy v. Yridhachala Reddy**, 1 M.L.T. 278.

SUBRAHMANYA AYYAR, J.

4.—*Madras Acts.*—(Continued).

Act VIII of 1865 (Rent Recovery).

- (1) *Mortgagors of parts of a Zemindari village, tender of patta by patta whether joint or several.*

The first plaintiff, in this case, was the mortgagor of an undivided moiety of a Zemindari village. The other plaintiffs were the mortgagors of the other undivided moiety. They tendered a patta in their joint names to the defendants. On the question of the plaintiffs' right to tender a joint patta, *held*, that they would be entitled to do so if they have been receiving rents jointly, but if, on the other hand, the defendants have been paying rents separately for each moiety of the village, they would be entitled to demand a separate patta for each of such moieties. *Muttiah Chetty v. Chinnathambi Ambalagan*, 16 M.L.J. 6.

MOORE and SANKARAN NAIR, JJ.

- (2) *Power-of-Attorney, grant of, to exercise rights of Shrotriendar—Power irrevocable—Acceptance by tenants of pattas tendered by shrotriendar with knowledge of grantee's right—Subsequent tender of pattas by grantee—Refusal thereof by tenants—Suit by grantee to enforce acceptance of pattas, maintainability of.*

A shrotriendar gave to the plaintiff a power-of-attorney, authorizing him to exercise the rights of shrotriendar under Act VIII of 1865. Sometime after, the shrotriendar purported to revoke this power-of-attorney and gave notice to the defendants that he had done so. He then tendered pattas to the defendants which the defendants accepted. The plaintiff, subsequently, presented pattas for the same *fasli* and the defendants refused to accept them on the ground that they had already accepted pattas from the shrotriendar. Hence, the present suit to enforce the defendants to accept pattas from the plaintiff. *Held*, the power to the plaintiff, being coupled with an interest, was in law irrevocable. At the time, the defendants accepted the pattas, they were aware that the shrotriendar's right to tender the pattas was disputed by the plaintiff and that the right to tender the pattas was claimed by the plaintiff, by virtue of the authority, which had been given to him by the shrotriendar. The District Judge was wrong in dismissing the suits on the ground that, as the relation of principal and agent existed between the shrotriendar and the plaintiff, and the pattas tendered by the shrotriendar

4.—*Madras Acts.*—(Continued).

Act VIII of 1865 (Rent Recovery).—(Continued).

had been accepted, the plaintiff was not entitled to tender second patta by reason of the fact that the shrotriendar had acted in contravention of the contract with the plaintiff in himself tendering the patta. Suits remanded for disposal on the other points in the cases. *Rajaratna Naidu v. Narasimha Charlar*, 28 M. 301 = 16 M. L. J. 148.

WHITE, C. J., and BENSON, J.

- (3) *S. 1—Landlord and tenant—Exchange of putta and muchilika between superior landholder and Inamdar holding under him.*

A superior landholder is not required to exchange putta and muchilika with the Inamdar holding under him. The circumstance that the latter happens to possess the *Kudiraram* right in the property, in respect of which he is also Inamdar, bound to pay 'rusum' to the landholder, does not alter the case or impose upon the landholder an obligation, which would not otherwise subsist between him and the Inamdar. *Krishnamachari v. Rangachariar*, 16 M.L.J. 483 = 1 M.L.T. 331.

SUBRAHMANYA AYYAR and MILLER, JJ.

References:—27 M. 463, R. and 13 M. L. J. 361, F.

- (4) *Ss. 1, 3, 38 and 39—Intermediate landholder, whether a tenant within the meaning of the Act—Superior landholder, right of, to proceed under the Act for arrears of rent due by intermediate landholder.*

A superior land-holder proceeded under S. 39 of the Act in respect of arrears of rent due under the terms of a lease. The legality of the distraint was impeached on the ground that an intermediate land-holder bound to pay rent to a superior land-holder is not a tenant within any of the provisions of the Act. *Held*, an intermediate land-holder bound to pay rent to a superior land-holder is a tenant within the meaning of the Act for some of the purposes, though not tenant within the meaning of S. 8. There is nothing in the language of Ss. 38 or 39 to confine the operations of these sections to cases where the tenant proceeded against is a cultivating tenant to whom S. 3 is applicable. The true effect of the reference in S. 38 to landholders, mentioned in S. 8, is to exclude landholders falling under para 2, S. 1, from resorting to the remedy made available under Ss. 38

4.—*Madras Acts.*—(Continued).

Act VIII of 1885 (Rent Recovery).—(Continued).
and 89. **Muthusami Pillai v. Arunachellam Chettiar**, 15 M.L.J. 361=29 M. 79.

SUBRAHMANIA AYYAR, OFFG. C. J. and
BODDAM, J.

(5) S. 3—See No. 4, *supra*.

(6) S. 7—*Suit for value of share of produce melvaram due from tenant—Suit brought more than three years after the date when rent was due by custom, but within three years of tendering patta—Limitation—*

There is nothing to support the contention that, where the rent is ascertained and is payable, by custom, on some date before the close of a *fasli* year, the period of limitation does not run from such date, but runs either from the close of the *fasli* or from the date of the tender of *patta*. It is true that the tender of *patta* is a condition precedent to proceedings for the recovery of rent, but there is nothing either in the Rent Recovery Act or in the Limitation Act to render the date of such tender the date from which limitation begins to run. There is nothing to prevent the landlord from tendering the *patta* early in the *fasli*. **Arunachellam Chettiar v. Kadir Rowthen**, 1 M.L.T. 315=16 M.J. J. 486.

BENSON and MOORE, JJ.

Reference.—27 M. 143 (P.C.), *Expl.*, and *Distd.*

(7) S. 8—*Landlord's refusal to grant patta—Disputed transfer of original tenant's right.*

Where there has been a transfer of tenant's interest to a third party and the transfer is admitted by the parties concerned, it is competent to, and may be the duty of, the landholder to treat the transferee as a tenant; but, where the original tenant disputes the transfer, it is not competent for the landholder to determine the question himself and refuse to grant a *patta* to the person, who was admittedly the tenant before the disputed transfer. **Orf v. Rakkumarathi**, 29 M. 83.

SUBRAHMANIA AYYAR, OFFG. C. J. and SANKARAN NAIR, J.

(8) S. 9—*Trees in back-yards of house not liable to be assessed to rent as cultivated land—*

The piece of land for which rent was claimed and a *patta* tendered was unassessed *poram-*

4.—*Madras Acts.*—(Continued).

Act VIII of 1885 (Rent Recovery).—(Continued).

boke land forming part of a village-site or *grama nattam*. There was a house on the site and, in the back-yard, there were a few trees. Since the house came down, the trees were in the enjoyment of the owner of the house. *Held*, the existence of the trees did not render the back-yard a cultivated land assessable to rent; the tender of *patta*, therefore, was illegal and the plaintiff was not entitled to any rent at all. **Elumalai Chettiar v. Natesa Mudaliar**, 29 M. 81.

SUBRAHMANIA AYYAR, OFFG. C. J. and BODDAM, J.

S. 9—.....I, 811.

Ss. 9 and 51—.....,, ,,

S. 11—.....,, ,, and 813.

I, *Landlord and Tenant*, No. 55.

(9) S. 12—*Surrender of holding by tenant—Useless conditions in a patta, effect of—*

A person, who has been a tenant, remains the tenant until his tenancy is properly determined; and, until this occurs, he is entitled to insist that he is the person, to whom a *patta* should be tendered, and by whom a *muchilika* must be executed; and, under S. 12 of the Rent Recovery Act, the tenant can only surrender his holding in the manner there indicated; until that course is adopted by him he remains the tenant, unless it be that his landlord has expressly or impliedly agreed to accept another person as his tenant.

Enhancement of rent is perfectly legal when it is made in accordance with a special agreement between the landlord and tenant. A clause in a *patta* precluding the tenant from cutting the fruit trees is not objectionable, as such a clause is proper and necessary for the protection of the landlord from such deliberate waste on the part of the tenant. A clause in a *patta* that, after the *patta* terminates, the tenant shall not cultivate the land until he has accepted a *patta* and executed a *muchilika* for the ensuing *Fasli* is entirely useless and unenforceable and the insertion of it does not make the *patta* bad. **Ramasami v. Anandrasu**, 16 M.L.J. 57.

BODDAM, J.

(10) S. 38—See No. 4, *supra*.

(11) S. 39, See No. 4, *supra*.

(12) *Period of limitation for suits under S. 40—Legality of attachment-proceedings when rent is payable in kind.*

4.—*Madras Act.*—(Continued).**Act VIII of 1898 (Rent Recovery)**—(Continued).

Attachment proceedings may legally be taken under the Rent Recovery Act even in cases where the rent is payable in kind.

A summary suit presented against an attachment under S. 40 of the Rent Recovery Act is within time, if presented within 90 days, since the term 'month' in S. 40 is intended to be an equivalent for the period of 90 days as provided for in respect of all summary suits in S. 51.

Where a *pattah* once tendered has been altered in appeal, tender of a fresh *pattah* in accordance with the final decision must necessarily be made before the enforcement of any of the terms of the tenancy (a). **Yamadaya Desikar v. Murugesu Mudali**, 29 M. 75.

SUBRAHMANIA AYYAR, OFFG. C.J. and
SANKARAN NAIR, J.

Reference.—(a) 10 M. 229, Diss.

Act I of 1876.

- (1) *Separate registration and sub-division of portion of permanently settled estate*—Alienation, 'alienor,' 'alienee' meaning of—Jurisdiction of Collector—Private agreement apportioning *peishcush* not binding on Government.

Where plaintiff, an alienee of a portion of a permanently settled estate, applied to the Collector for its separate registration and sub-division, and the third defendant, who held a share in the *Mitta*, in which plaintiff was a shareholder under his alienation, raised an objection to such separate registration, on the ground that the parties had agreed, under a private partition between the alienor and the other co-sharers to apportion the *peishcush*, payable by each shareholder, and that the amount of *peishcush* to be fixed by the Collector as payable by the plaintiff, ought not to differ from the amount fixed by the agreement, held, that it was the duty of the Collector to enquire into the objection raised by that defendant and, if he disallowed it, to grant the plaintiff's application.

The agreement to apportion the *peishcush* made between themselves by the parties is not binding on the Government.

The terms 'alienor' and 'alienee' in the Act are reciprocal, and necessarily imply only those parties between whom the reciprocal relation exists; in this view, the third defendant

4.—*Madras Act.*—(Continued).**Act I of 1876.**—(Continued).

is not a party to the particular alienation, in respect of which the application was made to the Collector.

There is no foundation for the view that 'alienation' refers only to an alienation by a person, whose name is entered in the Collector's register; S. 5 of Madras Regulation XXV of 1802 plainly implies the contrary. **Collector of Salem v. Pear Batcha Sahib**, 16 M.L.J. 468=1 M.L.T. 491.

SUBRAHMANIA AYYAR and MILLER, JJ.

Act IV of 1894 (District Municipalities).

- (1) *Ss. 3, 4, 21, 27, 261—Municipality re-constituted after supersession—Maintainability of suit against the new Municipality for trespass committed by the old one—necessity for notice before suit for injunction against Municipality—Natural rights.*

On the supersession of a Municipality, the Municipal Councillors, holding office at the time of the supersession, no doubt, cease to do so. But the Municipality itself is left intact, and supersession "for a specified period" is but a suspension of the council, and not its total dissolution. The reconstituted council is a revived corporation, revived with all its rights and liabilities, which, during the period of supersession, were suspended, but not destroyed. A suit, therefore, lies against the revived corporation for acts done by the superseded one.

In a suit for injunction against a Municipality, no notice is necessary under S. 261 of the Act, inasmuch as suits for injunction are not within that section. Suits referred to in cl. (1) of that section are those, which relate to acts "done or purporting to be done", whereas a claim for injunction is with reference to what it is apprehended, will be done in the future. It would not be right to impute to the legislature, an intention to insist upon the lapse of an interval involved in the provision as to notice, even in regard to cases where such lapse might be attended with the completion of the threatened injury, the prevention of which is the very end and aim of the suit.

A person has a natural right, as owner of land to raise a ridge on his own land adjoining a highway, so as to prevent water flowing from such highway, into his garden; and the Municipality will be guilty of trespass and liable for da-

4.—*Madras Acts.*—(Continued).**Act IV of 1884 (District Municipalities).**—
(Continued).

mages, if it removes the ridge so put up, and an injunction may be granted restraining it from repeating such illegal acts. **Mahamahopadyaya Runga-Chariar v. The Municipal Council of Kumbakonam**, 1 M.L.T. 333.

SUBRAHMANIA AYAR and MILLER, JJ.

References.—3 H. L. 338 and 2 A. A. C. 99, F., Special No. of Weekly Reporter, 1864 p. 25, R., 1 M. 335, 12 C. 323 and 8 C. 468, *Distd.*

(1-a) S. 4—See No. 1, *supra*.

(1-b) S. 21—See No. 1, *supra*.

(1-c) S. 27—See No. 1, *supra*.

(2) S. 45—*Suit on contract not signed as required by S. 45, effect of—executed consideration.*—

This was a suit by a contractor against a Municipality on a contract, which was proposed to be entered into between the defendant, Municipal Council and the contractor, plaintiff. The contract was signed by the contractor but was not signed by the Chairman, or Vice-Chairman and one Councillor, as required by S. 45 of the Act. The contract was of a value above Rs. 200. *Held*, the contract was binding on the defendant-Council (a). Nor can the Municipality be rendered liable on the ground of executed consideration (b). **Ramasawmi Chetty v. The Municipal Council, Tanjore**, 29 M. 360.

SUBRAHMANIA AYAR and MOORE, JJ.

References.—(a) 27 A. 592, F. (b) L. R. 8 A. C. 517, F.

(3) S. 55, meaning of the word “Days” in—

Under S. 55 of the Act, where an officer has held his office within the limits of a Municipality for 60 days, reckoned consecutively or from time to time, within a half-year, he becomes liable to be assessed for professional tax for such half-year. *Held*, the word ‘day’ above is to be understood in its general meaning of the 24 hours from sunrise to sunrise and must not be taken to denote the 12 hours’ time from sunrise to sunset. To charge the tax, therefore, the Municipality has to show that the officer taxed has spent within its limits not merely fractions of days sufficient when added up to constitute 1440 hours, but 60 entire and unbroken periods in point of law, of 24 hours each. **The Municipal Council of Cuddalore v. S. Subrahmaniya Aiyar**, 16 M.L. J. 101=29 M. 329.

4.—*Madras Acts.*—(Continued).**Act IV of 1884 (District Municipalities).**—
(Concl'd.)

SCBRAHMANIYA AIYAR, J.

S. 191 (2) and S. 262 (2)—I, 87.

(4) S. 261—See No. 3, *supra*.

Act I of 1886 (Abkari).

S. 28—I, 81.

Act IV of 1889 (Salt).

Ss. 16, 25 and 87—I, 89.

(1) Ss. 16 (a), 18 and 27—*Cancellation of license under S. 27—Licensee entitled to compensation under S. 16 (a) and not S. 18.*

Suit, against the Secretary of State, for cancellation of his order resuming certain salt-pans and for possession of those pans. The decision of the District Munsiff decreeing in plaintiff's favour, if defendant failed to pay proper compensation under S. 16(a) of the Act, was reversed by the District Judge, on the ground that plaintiff was entitled to compensation, not under the said S. 16 (a) but under S. 18 of the Act. *Held*, on second appeal, modifying the order of the District Judge, that S. 10 of the Act has no application to a case like the present in which the license has been cancelled under S. 27 of the Act. In such a case, the licensee is only entitled, under S. 16 (a), to the value of the proprietary right in the land, and, in calculating such value, the value of the land, as a site for salt manufacturer, is not to be taken into account. **The Collector of Chingleput for the Secretary of State for India v. Subraya Mudaliar**, 22 M. 181.

DAVIES and BENSON, JJ.

(2) S. 18 — See No. 1, *supra*.

(3) S. 27—See No. 1, *supra*.

Act III of 1895 (Hereditary Village Offices).

(1) Ss. 4, 13, 21—*Suit to recover land alleged to be the emolument of plaintiff's office of karnam—Defendant's denial of plaintiff's claim—Jurisdiction of Civil and Revenue Courts.*

A suit, in which the plaintiff claims to recover possession of land, which he alleges is the emolument of his office of karnam, and the defendant resist the plaintiff's claim on the ground that the land is not the emolument of the office, but is the private property of the plaintiff, is a suit for emoluments and the Civil Courts have no jurisdiction to entertain the suit.

4.—*Madras Acts.*—(Continued).

Act III of 1895 (Hereditary Village Offices). (Continued).

S. 21 takes away the jurisdiction of the Civil Courts in suits for emoluments and, under section 4, emoluments may be lands. Therefore, the words "emoluments of any such office" occurring in Ss. 18' and 21, must be construed as including a claim for lands, which are alleged to constitute the emoluments of the office.

The word "emoluments" in S. 21 is not limited to emoluments, when there is no dispute as to what constitutes the emoluments.

In the absence of express declaration by the Legislature, the jurisdiction of the Civil Courts must be limited to the two cases mentioned in S. 13 (1), para (ii), and in the proviso to S. 21.

Per MILLER, J.—Where the emoluments are secured to the plaintiff, it may be unnecessary to take away, from the Civil Court, the duty of determining their precise nature; but if the emolument itself is in jeopardy, the decision must be placed in the hands of the Revenue Court, which is specially appointed for the protection of service inams; and the object of the Legislature might, in some cases, be defeated, if the adjudication be not confined to the Revenue Courts, in cases in which the inam is undoubtedly land.

Suits not within the terms of S. 13 (1) may be cognizable by the Civil Courts, for, though S. 21 is wide enough to embrace all claims for emoluments, however granted, that section must be read with S. 13, so as not to deprive a suitor of all remedy in cases not within the latter section. **Kesaram Narasimhulu v. Yuddanda Row Narasimhulu Patnaidu**, I. M. L. T. 381 (F.B.)=16 M.L.J. 514.

WHITE, C.J., BENSON and MILLER, JJ.

References:—4 M. H. C. R. 70, R. 13 M. 41, D. S. 5—I, 89.

(1-a) S. 13—See No. 1, *supra*.

(1-b) S. 21—See No. 1, *supra*.

(2) S. 21—*Question whether land sued for was attached to office, jurisdiction of Civil Court to determine.*

Plaintiff, a *karnam* in a proprietary village under the Act, sued to recover possession of certain lands, alleging that they formed the emolument of his office. Defendant contended that the said lands were not attached to the

4.—*Madras Acts.*—(Concluded).

Act III of 1895 (Hereditary Village Offices). —(Concluded).

said office but was the private property of the plaintiff, which passed to the defendant under a Court-sale. The point for determination was whether Civil Courts had any jurisdiction to entertain the suit. *Held*, the policy of the Act appears to be to confine the jurisdiction of the Revenue Courts to suits involving claims to offices under it and the emoluments thereof and leave the decision of other questions to the ordinary Courts. The matters excepted from the cognizance of Civil Courts have been specified in S. 21 and in respect of claims like the present, one not falling under any of the classes specified therein, the jurisdiction of the Civil Courts must be taken to exist and not as excluded. The proper Courts, to determine such questions, as whether the lands in dispute are those attached to the office, are the Civil, and not the Revenue, Courts. **Kesaram Narasimhulu v. Yuddanda Rao Narasimhulu**, 1 M.L.T. 102—16 M.L.J. 333.

SUBRAHMANYA AYYAR and MOORE, JJ.

(N. B.) This case has since been overruled by a Full Bench. See No. 1, *supra*.

Act IV of 1899 (Amending Reg. V of 1894).

Sec I, 90.

5.—*N. W. P. Acts.*

Act XVI of 1865 (N. W. P. Revenue Courts).

(1) *Jurisdiction of Settlement Court—Settlement Court, procedure of—Decree of Extra Assistant Commissioner reversed, without any appeal, merely under verbal instructions by a superior Settlement Court—Order passed without appeal, validity of.*

The plaintiff, Secretary of State, claimed possession of a piece of land, which was originally part of village B but had, subsequently, become part of village J, of which the defendant was a co-sharer. In the year 1870, the Extra Assistant Commissioner had also passed a decree for the said land in favour of the predecessor in title of the defendant. Without this order having been appealed against, the Settlement Officer, in 1872, merely on verbal instructions received from the Commissioner, issued notice to the parties and, after hearing them, reversed the decree of the Extra Assistant Commissioner, and declared that the land in suit

5.—N. W. P. Acts.—(Continued).**Act XVI of 1886 (N. W. P. Revenue Courts).
—(Concluded).**

was the property of the Government. This order, however, was not carried into effect and the land was continually recorded in the *khassas* of village J in the name of the predecessors of the defendant. The defendant, as well as his predecessors, continually remained in possession till 1894, when an attempt was made, on behalf of the plaintiff, to lease the land to cultivators. In 1896, there was a demarcation made on the application by the defendant, and the boundary pillars put up with the consent of the parties, according to which the land in suit was allotted to the village J. In 1908, a fresh survey was applied for on behalf of the plaintiff, which resulted in the land in dispute being assigned to the plaintiff. On defendant's refusing to give up possession, the plaintiff brought the present suit.

Held, that the order of the Settlement Officer, passed in 1872, without there being any formal appeal before him and merely under verbal instructions by a Judge of a superior Court, was wholly irregular and without jurisdiction, being in contravention of the procedure expressly laid down for the Settlement Courts; and could not, therefore, be considered a judicial decision or accepted as a judicial adjudication as to the title of the plaintiff to the land in suit; and the mere fact that the order was passed after notice to the parties and after the parties had been heard would not make it a good order. **The Secretary of State for India in Council v. Thakur Mohar Singh**, 9 O. C. 301.

EVANS, J.C.

Reference:—1 O. C. 289, R.

Act XIX of 1873 (N. W. P. and Oudh Land Revenue).**S. 77—I, Act III of 1901 (N. W. P. and Oudh), No. 1.****(1) S. 113—Partition—Covenant not to partition—How far binding against heirs—Question of proprietary right.**

The heirs of parties to an agreement, in which there is a covenant not to partition the property, are not bound by the covenant not to partition, though the original parties might have been bound by it.

5.—N. W. P. Acts.—(Continued).**Act XIX of 1873 (N. W. P. and Oudh Land Revenue).—(Concluded).**

The objection that the applicants for partition, though proprietors, are not entitled to obtain a partition of their shares, is an objection that raises a question of proprietary right, within the meaning of S. 113 of the Land Revenue Act. **Abu Muhammad Khan v. Kanika Fizza**, 2 A. L. J. 552, A. W. N. (1906), 240=28 A. 185.

STANLEY, C.J. and BURKITT, J.

(2) Ss. 113, 114, 241 (f)—Partition—Question of title raised before and decided by Assistant Collector—Appeal to wrong Court—Suit in Civil Court for declaration of title—Jurisdiction.

In an application for partition before an Assistant Collector, certain parties raised an objection that they were exclusively entitled to a portion of the lands sought to be partitioned. The Assistant Collector tried the question of title so raised under S. 113 of the N. W. P. Land Revenue Act, 1873, and decided it in favour of the objectors. The applicants appealed to the Collector, who entertained the appeal and reversed the finding of the Assistant Collector, and this decision was upheld by the Commissioner and the Board of Revenue. Before the partition proceedings were completed, the unsuccessful objectors filed a suit in the Civil Court, praying for a declaration that the lands in question were their exclusive property and, if necessary, for a decree for possession. *Held*, that the suit was maintainable. No appeal lay on the revenue side, from the Assistant Collector's order, on the plaintiff's objections, which was now final; and, inasmuch as the suit had been instituted before the completion of the partition proceedings, it was not obnoxious to the prohibition contained in S. 241 (f) of Act XIX of 1873. **Muhammad Jan v. Sadanand Pande**, A. W. N. (1906), 30=3 A. L. J. 48=28 A. 394.

STANLEY, C.J. and BURKITT, J.

(3) S. 114—See No. 2, *supra*.**(4) S. 241 (f)—See No. 2, *supra*.****Act XII of 1881 (Rent).****S. 9—I, 91, 92.****S. 9—I, Act II of 1901 (N. W. P.), No. 1.****(1) S. 35—Decree for rent—Execution of decree—Application to eject tenant—Appeal**

5.—N. W. P. Acts.—(Continued).**Act XII of 1881 (Rent).—(Concluded).**

A land-holder obtained, under Act No. XII of 1881, S. 36, a decree for arrears of rent against certain tenants. The decree-holder did not attempt to execute this decree against the tenants, until more than three years had elapsed from the date thereof; but, meanwhile, she did apply for and obtain the ejectment of the tenants. *Held*, that execution of the decree was barred, and that the decree-holder's application for ejectment could not operate to save limitation.

Sed quære—whether any appeal lay from the order of the first Court (Assistant Collector) disallowing execution (a)? *Maharani of Damsraon v. Buddha Kunwar*, A.W.N. (1905), 213 = 2 A.L.J. 661 = 28 A. 311.

STANLEY, C. J. and BURKITT, J.

Reference.—(a) 27 A. 31, doubted.

S. 42—I, 42.

Act XV of 1883 (N. W. P. & Oudh Municipalities).

S. 40—I, Act I of 1900, No. 1.

Act III of 1889 (N.W.P. & Oudh Court of Wards).

S. 8 (d), (1)—I, 94.

Act I of 1900 (N.W.P. & Oudh Municipalities).

S. 47—I, 94.

- (1) S. 49—*Suit against a Municipal Board—Notice of suit—Whether notice necessary in the case of a suit for an injunction against an act threatened.*

Held, by AIKMAN, J. (KNOX, J. dissentiente), that, where a suit is brought against a Municipal Board, to which the North Western Provinces and Oudh Municipalities Act, 1900, is applicable, to obtain an injunction prohibiting the Board from levying a tax, which the Board has threatened to levy on the plaintiff, the service of such notice as is prescribed by S. 49 of the said Act is a condition precedent to the maintainability of the suit (a).

KNOX, J., *contra*. Where the suit is for an injunction merely, no previous notice is necessary (b). *Greenway v. The Municipal Board of Cawnpore*, A. W. N. (1906), 107 = 3 A.L.J. 341 = 28 A. 600.

AIKMAN and KNOX, JJ.

References.—(a) 1 A. 206, 2 A. 269, 4 App. 102 and 339, D. (b) 7 C. 499, R.

Ss. 90 & 91—I, 95.

5.—N. W. P. Acts.—(Continued).**Act I of 1900 (N.W.P. & Oudh Municipalities).—(Concluded).**

- (2) S. 187—*Rules framed by Local Government for the regulation of Municipal elections—Procedure—Power to award costs—Suit to set aside order awarding costs—Jurisdiction.*

A Magistrate, trying a petition to set aside the election of a member of a Municipal Board, is not empowered to award costs against the unsuccessful party: and if he does so, it is competent to the party, against whom costs are awarded, to sue in a Civil Court to have so much of the Magistrate's order, as relates to costs, set aside. *Chandra Bhan v. Girwar Lal*, A. W. N. (1906), 97 = 8 A.L.J. 420 = 28 A. 475.

BANERJI, J.

Act II of 1901 (N.W.P. Tenancy).

- (1) Application of S. 45, Civ. Pro. Code, to—*See Civil Pro. Code, No. 58, 3 A.L.J. 610.*

- (2) Ss. 8 and 22—*Tenant at fixed rate—Occupancy Tenant—Transfer by deed—Succession to such land—Sister no heir.*

A tenant at fixed rates is a tenant, described in S. 8 of the Act, and not a tenant who, under a contract with the Zamindar, holds at a fixed rate of rent.

Hence, where a zamindar transfers land under a deed to a tenant, conferring on him the right to occupy at a fixed rate of rent, the transferee becomes only an occupancy tenant and not a tenant at fixed rates as defined by S. 8 of the Act.

The sister of such a transferee, not being mentioned in the list of heirs given in S. 22 of the Tenancy Act, is not entitled to inherit. *Bachchi alias Bachla v. Bachchi*, 3 A.L.J. 513 = A.W.N. (1906), 219 = 28 A. 747

BANERJI, J.

- (3) S. 9—*Fixed rate tenancy—Evidence—Revision of settlement—Plea of entry of name with consent of the real fixed rate tenant.*

Held, that the provisions of S. 9 of the Agra Tenancy Act, 1901, are clear and imperative and bar a Court from inquiring whether a person's name has been entered at the last revision of settlement as a fixed rate tenant merely with the consent of the real tenant. *Mulai Singh v. Rajwant Singh*, A.W.N. (1906), 68 = 3 A. L. J. 842.

KNOX and AIKMAN, JJ.

5.—N. W. P. Acts.—(Continued).

Act II of 1901 (N. W. P. Tenancy).—(Continued).

- (4) S. 20—Occupancy rights sold—purchaser of such rights acquires nothing—right of occupancy tenant to relinquish after assignment.

It is of the utmost importance that occupancy holdings should not be subject to prolonged litigations. When such holdings are sold in execution of a decree contrary to the provisions of S. 20 of the Tenancy Act, the purchaser acquires nothing. The Act renders it illegal to sell an occupancy holding in execution of a decree.

Semble—An occupancy tenant, after assigning his rights or sub-letting, can relinquish his occupancy rights to the prejudice of his assignee or sub-lessee. **Madan Lal v. Saiyid Muhammad Ali Nasir**, 3 A.L.J. 476=A.W.N. (1906) 182=28 A. 696.

RICHARDS, J.

References.—10 L.R. Ir. 395, Ir. R. 5. L. 443, Ir. R. 6 Com. 34. *It*.

- (5) S. 20—Occupancy interest, mortgage of interpretation—bond executed while Act XII of 1881 in force—default after 1902.

Where certain debtors executed a bond covenanting to place the creditor in possession of the "land mortgaged" upon default in payment of interest and stipulating that "the land mortgaged shall remain hypothecated and pledged in lieu of the amount of debt so long as it is not paid off", *held*, that the "land mortgaged" meant "the land when mortgaged"; and the bond was not intended to, and did not, operate as a deed of usufructuary mortgage, until the date on which the default was made.

Where the money was borrowed when Act No. XII of 1881 was in force and default in payment of interest accrued after Act II of 1901 came in force, *held*, that the latter Act would govern the case.

Proprietors, whose proprietary rights are mortgaged under a deed of usufructuary mortgage, become tenants with rights of occupancy and those rights cannot be mortgaged. **Harmandan Rai v. Nakhedi Rai**, 3 A.L.J. 691=A.W.N. (1906), 302.

STANLEY, C.J., and KNOX, J.

- (6) S. 20—Mortgage of occupancy holding—Redemption of a prior valid mortgage—Rights of mortgagees—See MORTGAGE (REDEMPTION), No. 20, 3 A.L.J. 731.

5.—N. W. P. Acts.—(Continued).

Act II of 1901 (N. W. P. Tenancy).—(Continued).

S. 20—I, 95.

- (7) S. 21—Occupancy tenant—Usufructuary mortgage executed before the tenancy Act came into force—Civil Procedure Code, S. 562—Remand—Order of remand carried out—Appeal.

An appeal against an order of remand, under S. 562 of the Code of Civil Procedure Code, is not rendered nugatory by reason of the order having been carried out (a).

Held, also, that a usufructuary mortgage of his holding, made by an occupancy tenant, before the coming into force of the Agra Tenancy Act, is not rendered invalid by S. 21 of the Act, even if S. 21 does prohibit an occupancy tenant from parting with the possession of his occupancy holding by making a usufructuary mortgage (b). **Babu Lal v. Ram Kali**, A.W.N. (1906), 28=3 A.L.J. 40.

BANNERJI and RICHARDS, JJ.

References.—(a) 12 A. 510, F. (b) 15 A. 219 and 26 A. 78, R.

- (8) S. 22—See No. 2, *supra*.

Ss. 25 and 31—I, 96.

- (9) S. 32—Agreement dividing holdings—Suit for possession of a moiety barred.

A suit for possession of a moiety of cultivatory holdings is a suit for division of those holdings, inasmuch as the Court is asked to declare that the plaintiff is entitled to an undivided share of the holdings and to put him in possession of that share.

If the owners of an occupancy holding enter into an agreement and divide the holding, the division would not be binding on the landlord.

A suit for possession of a share in such holding under the agreement is barred by the provisions of S. 32 of the Act. **Achhey Lal v. Janki Prasad**, 3 A. L. J. 735=A. W. N. (1906), 274.

STANLEY, C.J. & KNOX, J.

- (10) Ss. 56, 57 (a) and (c), and 80—Landholder and tenant—Ejectment—Construction of document—Lease—Condition inconsistent with the provisions of the Tenancy Act.

The plaintiff leased a village to the defendant. The defendant executed a *kabuliat* containing, amongst other provisions, a covenant for pay-

5.—N. W. P. Acts.—(Continued.)

Act II of 1901 (N.W.P. Tenancy).—(Continued)

ment of the rent, amounting to Rs. 7,050, half in the month of *Kartik* and half in the month of *Baisakh*, as also, in the event of the revenue of the village being enhanced, enhanced rent to the extent of the increase in the revenue. The lessee also covenanted to plant 10 *bighas*, per plough, with indigo and to transmit the indigo to the plaintiff every year and also to render in kind other produce. The *kabuliat* further contained a provision that the lessee should not allow any tenant to acquire occupancy rights, and that, on failure to observe this provision, he should pay to the lessor Rs. 50 per plough, as enhanced rent during the term of the lease. There was a further provision that, if the lessee failed to comply with the conditions of the lease, the plaintiff should have the power to dispossess him during the term of the lease. On failure of the lessee to observe the conditions above set forth, the lessor sued for and obtained a decree for his ejection. *Held*, that the condition of forfeiture for non-payment of rent was inconsistent with the provisions of the Agra Tenancy Act, 1901, and the plaintiff was not entitled to maintain his suit for ejection. But, inasmuch as the lease would expire by effluxion of time, within a year from the date of the High Court's judgment, the lessee was not, under section 80 of the Act, entitled to be restored to possession. **Tara Singh v. Khushhal Kunwar**, A.W.N. (1906), 110=3 A.L.J. 349=28 A. 610.

STANLEY, C.J. and KNOX, J.

(11) S. 57 (a)—See No. 10, *supra*.

(12) S. 57 (c)—See No. 10, *supra*.

Ss. 158 and 99—See I, *Res Judicata*, No. 21.

(13) S. 63—*Tenant acquiring the position of a land-holder*.

A tenant who, during the period of his occupancy, acquires a share in the proprietorship of a village, retains nevertheless the status of a tenant in respect of his holding and is subject to all the incidents of his tenancy. **Abul Hasan Khan v. Bhura**, A. W. N. (1906), 226=3 A. L. J. 763=28 A. 763.

Knox, J.

References.—S. A. 730 of 1889, F.

Ss. 76, 193—I, *Act XII of 1881* (N. W. P. *Rent*), No. 4.

Ss. 79 and 81—I, 97.

5.—N. W. P. Acts.—(Continued).

Act II of 1901 (N.W.P. Tenancy).—(Continued).

(14) Ss. 79 and 196—*Variety of relief—Claim to recover possession of a holding by a tenant—Civil and Revenue Courts—Appeal—District Judge, jurisdiction of—Applicability of S. 196*.

The policy of the Legislature is that suits and questions arising between landlords and tenants should be decided in the Revenue Court, and the plaintiff, by claiming a variety of reliefs, cannot come into the Civil Court and set aside proceedings already had in the Revenue Court.

Where the plaintiff alleged that one L, whom the plaintiff represented, was one of the tenants at fixed rate of holding, of which G, was the recorded tenant, and from which G alone was ejected, and claimed a variety of reliefs, but in reality wanted to be restored to possession of the holding from which he had been ejected, on the ground that the ejection proceedings in no way bound him, *held*, that the suit did not lie in the Civil Court.

S. 196 only applies to a case which was instituted in the wrong Court, but an appeal comes before the Court to which an appeal would have lain if the suit had been rightly instituted in the prescribed Court. **Ram Charan Ram v. Sheoraj**, 3 A.L.J. 226.

RICHARDS, J.

(15) S. 80—See No. 10, *supra*.

(16) Ss. 83 et seq.—*Land-holder and tenant—Surrender by tenant of his holding—Notice*.

Before a valid notice of surrender of his holding can be served on a land-holder through the Tahsildar, under the provisions of S. 85 of the Act, it is a condition precedent that the tenant should have himself given notice under S. 83 or S. 84 and that the land-holder should have refused to receive such notice. **Sumera v. Piare Lal**, A.W.N. (1905), 201=2 A.L.J. 665=28 A. 122.

STANLEY, C.J. and BURKITT, J.

(17) Ss. 164 (2), 166—*Successor of a lambar-dar, liability of, for profits not collected by his predecessor*.

The successor in title of a deceased lambar-dar is not liable to account for profits, which his predecessor may have failed to collect, or which he permitted to remain uncollected, owing to negligence or misconduct. **Dip Singh v. Ram Charan**, 3 A.L.J. 608=A.W.N. (1906), 252.

B.—N. W. P. Acts.—(Continued).**Act II of 1901 (N.W.P. Tenancy).—(Continued).**

STANLEY, C. J. and KNOX, J.

(19) S. 166—See No. 17, *supra*.

(19) S. 175—No appeal from orders to execute a decree—orders—decrees.

An appeal does not lie from an order of an Assistant-Collector of the First Class passed on an application to execute a decree of a Court of Revenue, such orders not having the force of decrees. *Musammatt Zohra v. Manga Lal*, 3 A.L.J. 569 (F.B.)=A.W.N. (1906), 223=28 A, 758.

* STANLEY, C.J., and KNOX and AIKMAN, J.

Reference.—27 A. 31, overruled.

Sa. 175, 180&193—I, 98.

Sa. 176, 177 & 193—I, 99.

(20) S. 177—Appeal—Question of proprietary title—Sir holder and his sub-tenant.

Where the plaintiffs sued the defendant for rent of their *sir* land alleging that he was their sub-tenant and the defendant claimed to be the principal tenant, held that, as between the plaintiffs and the defendant, there was a question of ownership of the particular land and the question raised was a question of proprietary title and an appeal lay to the District Judge against an appellate decree of a Collector. *Chhitar Singh v. Rup Singh*, 3 A.L.J. 603=A.W.N. (1906), 247.

BANERJI, J.

(21) S. 177—appeal—suit for recovery of fees under the Excise Act—relief for compensation joined—not entertainable by the Assistant Collector—no appeal lies.

S. 28 of the Excise Act is confined to the recovery of arrears of fees. Under the section, the plaintiff is not entitled to sue in the Revenue Court, for recovery of compensation or damages, in respect of a breach of contract.

Where a claim for fees, amounting to a sum below Rs. 100, is not entertained by the Assistant Collector, no appeal lies to the District Judge, under S. 177 of the Tenancy Act, supplemented by S. 28 of the Excise Act, and no second appeal will lie to the High Court. *Jugal Kishore v. Mui Chand*, 3 A.L.J. 802=A.W.N. (1906), 314.

STANLEY, C.J., and BURKITT, J.

Sa. 177 & 185—I, 99.

Sa. 127 (c) and 195—I, 99.

B.—N. W. P. Acts.—(Continued).**Act II of 1901 (N.W.P. Tenancy).—(Continued).**

(22) S. 180—See CIVIL PROC. CODE, No. 289 A. W.N. (1906), 186.

(23) S. 182—Second appeal to District Judge—Further appeal to High Court.

No appeal lies to the High Court from a decree of the District Judge deciding a rent appeal from an appellate decree of a Collector. *Lachhmi Narain v. Narotam Das*, 3 A.L.J. 623=A.W.N. (1906), 251.

* RICHARDS, J.

(24) S. 182—Appeal—Second appeal to Judge—Further appeal to High Court—

Land Revenue Act (III of 1901), S. 34

(5)—application of new Act—Landholder in possession before the passing of the new Act.

In a suit to contest a distraint, if a question of proprietary title is raised, an appeal lies to the District Judge from an appellate decree of a Collector, and a further appeal lies to the High Court under S. 182 of the N. W. P. Tenancy Act.

Where the defendant had obtained possession of the property before Act No. III of 1901 (N.W.P. Land Revenue Act) came into force, S. 34 (5) of that Act cannot affect the right of distraint given to the landholder by S. 119 of the N.W.P., Rent Act. *Chajmal Das v. Sirya*, 3 A.L.J. 625=A.W.N. (1906), 254.

AIKMAN, J.

(25) S. 182—Third appeal—rent-suit—High Court, jurisdiction of.

S. 182 of the Act was intended to meet, and was confined to, suits, which were instituted in the Court of an Assistant Collector of the first class or of a Collector and was not intended to embrace suits instituted before an Assistant Collector of the second class. No third appeal lies to the High Court from the decree in second appeal of a district Judge in a rent-suit. *Lachmi Narain v. Narotam Das*, 3 A.L.J. 688=A.W.N. (1906), 272.

STANLEY, C. J., and BURKITT, J.

(26) S. 193—Procedure—Order remanding case to Court of first instance for re-trial—Appeal.

Held, that no appeal lies from an order of an appellate Court in a suit under the Agra Tenancy Act, 1901, remanding the case to the

5.—N. W. P. Acts.—(Continued).

Act II of 1901 (N.W.P. Tenancy).—(Continued).
Court of first instance for trial upon the merits.
Jahur Ali v. Shar Ali, A.W.N. (1906), 5=3 A.L.J. 20=2 A. 283.

STANLEY, C.J. and BURKITT, J.

Ss. 193 and 197 (1)—I, 100.

(27) *S. 196—See No. 14, supra.*

Ss. 196 and 197—I, 100.

(28) *S. 197—Profits—Mesne profits—Lessee—Trespasser.*

There is an essential difference between a suit for mesne profits and a suit for profits under the Tenancy Act, and a District Judge cannot, by reason of S. 197 of that Act, pass a decree for profits against a co-sharer when mesne profits have been claimed.

A co-sharer's lessee is not a trespasser and a decree for mesne profits cannot be passed against him. **Kazi Aminullah v. Hajira**, A.W.N. (1906), 222=3 A.L.J. 767.

BANERJI, J.

Reference.—A.W.N. (1894), 127, F.

(20) *S. 201—Act No. I of 1872 (Indian Evidence Act), s. 4—Evidence—Record of plaintiff's name as a co-sharer—Presumption.*

The presumption enjoined by clause (3) of section 201 of the Agra Tenancy Act is not conclusive, even in a Revenue Court, but may be rebutted, as, for instance, by evidence showing that the plaintiff has not been in possession of the property in respect of which profits are claimed for more than twelve years before suit, and the defendants have openly denied the plaintiff's title for more than that period. **Dil Kunwar v. Udal Ram**, A.W.N. (1906), 816.

KNOX, J.

References:—F. A. F. O. No. 70 of 1904: May 23, 1905, Distd.

S. 201—I, Act XII of 1881 (N.W.P.), No. 5.

S. 202—I, Civil Pro. Code, No. 290.

See, also, I, 101, No. 15 and I, Civil Pro. Code, No. 297.

(30) *Sch. IV. No. 47—Execution of decree—Limitation.*

A Rent Court decree for Rs. 150-14-9 was passed on the 14th of March, 1901. On the 18th of March, 1904, the decree-holders applied for execution by attachment and sale of certain

5.—N. W. P. Acts.—(Continued).

Act II of 1901 (N.W.P. Tenancy).—(Continued).
movable property of their judgment-debtors. Execution issued as prayed, but only a small portion of the decretal amount was realized. On the 22nd of August, 1904, the decree-holders filed a further application for execution against the immovable property of the judgment-debtors. *Held*, that execution was time-barred. The second application could not be treated as an application merely in continuance of the application of the 18th of March, 1904. **Mohabbat Bahadur Lal v. Uda Kunwar**, A.W.N. (1906), 97=8 A.L.J. 324.

AIKMAN, J.

Reference.—15 M.L.J. 243, R.

Act III of 1901 (N.W. P. and Oudh Land Revenue). •

Ss. 3, 87, 91—I, 101.

(1) *S. 34—Transfer of possession before the Land Revenue Act came into force.*

Held, that S. 34 of the Act does not apply to cases of transfer of possession which took place before the Act came into force. **Gaya Prasad v. Pandit Tekdhar**, 9 O.C. 204.

SCOTT, J.C.

(2) *S. 34 (5)—See ACT II OF 1901 (N.W.P. TENANCY), No. 24, 3 A.L.J. 625.*

Ss. 56, 86—I, 102.

(3) *S. 100—Rent of land, originally a grove, but subsequently brought under cultivation and assessed to revenue, suit for—Oudh Laws Act, S. 3, cl. (g).*

The plaintiffs sued the defendant for the rent of a plot of land held by him as grove, but brought under cultivation by him in the year 1809 *Fasli*. The plot was assessed to revenue by the Collector in that year and the revenue so assessed was paid by the plaintiffs for 1810, 1811 and 1812 *Fasli*. At the beginning of 1812 *Fasli*, the Deputy Commissioner, acting under S. 100 of the Land Revenue Act, fixed the rent of the plot and the defendant paid it for 1812 *Fasli*. The question was whether he was liable for the rent for 1810 and 1811 *Fasli*.

Held, that, although the Land Revenue Act was silent as to the date from which rent fixed under S. 100 of the Act should be payable, yet, having regard to cl. (g) of S. 3 of the Oudh Laws Act, the defendant was liable for the rent fixed by the Deputy Commissioner from the date

5.—N. W. P. Acts.—(Continued).**Act III of 1901 (N. W. P. and Oudh Land Revenue).—(Continued).**

on which the revenue was assessed on the plot, **Syed Farzand Husain v. Galab Chand**, 9 O. C. 227.

CHAMBER and EVANS, J. C.

Reference.—8 A. 189, R.

- (4) S. 107—*Muhammudan Law—Partition—Recorded co-sharer—Possession in lieu of dower—Mortgagee.*

A Muhammudan widow in possession of her husband's property, in lieu of dower, who is a recorded co-sharer, can maintain a claim for a partition of her recorded share. S. 107 of the Land Revenue Act (III of 1901) provides only or the case of a mortgagee in possession and cannot be intended to cover the case of other persons, however much in other respects their possession may be analogous to that of mortgagees. **Habib-Ulla v. Musammat Kushimba**, 3 A.L.J. 481=A.W.N. (1906), 199.

STANLEY, C.J. and KNOX, J.

(5) S. 107, A decree of a Civil Court for partition is subject to the provisions of S. 107 of the Act and cannot be fully executed until the decree-holder's name is recorded in the revenue papers.—See CIVIL PRO. CODE, No. 145, A.W.N. (1906), 53.

- (6) Ss. 110, 111 and 233 (k)—*Partition—Suit for recovery of property in Civil Court—Jurisdiction.*

Held, that the prohibition contained in S. 233 (k) of the United Provinces Land Revenue Act, 1901, applies only to suits with respect to partitions, in which the plaintiff has had an opportunity of having his objections considered under S. 111 and has not availed himself of it. **Khasay v. Jugla**, A. W. N. (1906), 79=28 A. 432.

KNOX and AIKMAN, JJ.

- (7) S. 111—See No. 6, *supra*.
 (8) Ss. 111, 112, 233, 234—See ACT XVII OF 1876 (OUDH), No. 2, 9 O.C. 76.
 (9) S. 112—See No. 8, *supra*.
 (10) Ss. 183 and 233—See CONTRACT ACT, No. 27, A.W.N. (1906), 114.
 (11) S. 233—See Nos. 8 and 10, *supra*.
 (12) S. 233 (k)—See No. 6, *supra*.
 (13) S. 233 (k)—*Partition—objections to—summary dismissal—appeal—suit to set aside the order, maintainability of—*

5.—N. W. P. Acts.—(Concluded).**Act III of 1901 (N. W. P. and Oudh Land Revenue).—(Concluded).**

Where the plaintiffs objected, in the Revenue Court, to the partition of certain property, but that Court dismissed the objection, holding that it did not raise a question of proprietary title, held, that the order amounted to a decree and was open to appeal. S. 233 (k) barred the plaintiffs from bringing a suit in the Civil Court with respect to the partition. **Buthal Chaudhuri v. Jogi Chaudhuri**, 3 A.L.J. 617=A.W.N. (1906), 239.

STANLEY, C.J. and KNOX, J.

S. 233 (m)—I, 102.

- (14) S. 234—See No. 8, *supra*.

- (15) S. 234, cls. (f) and (p)—*Board of Revenue Rules (February 24th, 1902), Nos. 22, 23—Remuneration of lambardar.*

Held, that, in the absence of any agreement between lambardar, and co-sharers as to the lambardar's remuneration, the 'lambardar is entitled to 5 per cent. under Rule 23 of the Board of Revenue Rules, dated February 24th, 1902, and is entitled to the benefit of this rule, although in previous years he may have received nothing. **Gendra Kuar v. Piari Lal**, A.W.N. (1906), 175=28 A 693.

AIKMAN, J.

- (16) S. 234, cl. (p)—See No. 15, *supra*.

6.—Oudh Acts.**Act XIII of 1866.**

S. 3—See I, *Mortgage (Redemption)*, No. 14.

Act XXVI of 1866 (Oudh Sub-Settlement).

- (1) *Under-proprietary right, claim for, on ground of being old proprietors, without evidence of specific grant of the right.*

Held, that there is no law, which authorises a Court to hold that a person, who merely had been, at sometime, a proprietor and has held for a long time since at a favourable rent is necessarily an under-proprietor, but that there must be evidence of some specific grant of an under-proprietary right such as *birt* or *shankalap*, or of an acknowledgment by the taluqdar. **Raja Bhagwan Baksh Singh v. Mashar Hussain**, 9 O.C. 167 (B.)

SCOTT and WELLS, J. C.

Reference.—8 O.C. 145, R.

Sch. Rule 10—I, 102.

6.—Oudh Acts.—(Continued).

Act I of 1869 (Oudh Estates).

- (1) *S. 3—Dhar-dhura, custom of—Possession of land by reason of custom of Dhar-dhura, suit by Taluqdar for—*

The plaintiff, who was a Taluqdar, under Act I of 1869, sued the defendant for possession of some land, alleging that a sudden change in the course of the river that flowed between his village and that of the defendant in 1899, had transferred the land in suit, which was in the defendant's possession, to his (plaintiff's) side of the bank and that, by reason of an immemorial custom, known as the custom of *dhar-dhura* (literally stream boundary), he was entitled to it. The defendant denied the existence of the custom and further pleaded that, if such a custom ever prevailed, it was superseded by the Taluqdari *sanad* granted to the plaintiff's predecessor and by S. 8 of Act I of 1869.

Held, that the plea of custom was admissible in the case and that there was no reason for treating a title conferred by a Taluqdari *sanad* differently from a title acquired in any other manner. **Syed Abu Jafar v. Maharaja Sir Partab Narain Singh**, 9 O.C. 129 (B).

CHAMIER and WELLS, J. CS.

References.—I N.W.P.H.C.R. 224, S. C. No. 27, Jwala Prasad's Oudh Rulings, App. p. iv, Civil Appeal No. 185 of 1873, 11 B.L.R. 265, 18 Moo. I.A. 1, Rafique and Jackson's Privy Council Rulings, No. 66, S.C. No. 290, F. C. A. No. 40 of 1897, *R.*

Ss. 8, 11, 14, 15 & 22 (b) —I, 103.

- (2) *Ss. 13, 16, 17 and 22—Gift—Oral gift by Taluqdar in favour of his wife—Transfer of Property Act, S. 123.*

In a suit on a mortgage, executed in 1896 by the first and second defendants in favour of the plaintiff, their mother (the present appellant) was impleaded as the third defendant, because the mortgaged property was recorded in her name in the revenue registers. The property was part of the estate of a Taluqdar, who died intestate in 1895. His name was entered in Lists I and III, prepared under S. 8 of the Oudh Estates Act of 1869, and, therefore, under S. 22 of that Act, the elder of the two male defendants was entitled to succeed to his estate. The appellant's case was that the property had been transferred to her by her husband (the taluqdar) in 1892, by an oral gift,

6.—Oudh Acts.—(Continued).

Act I of 1869 (Oudh Estates).—(Concluded).

that she had, from that date been in possession of the property and that her sons had no power to mortgage it to the plaintiff.

Held, under the Oudh Estates Act, the gift in favour of the appellant was ineffectual and invalid and that, if the gift was not governed by that Act, it was invalid under S. 123 of the Transfer of Property Act (a). **Thakurian Chhabraj Koor v. B. Gopal Lal**, 9 O. C. 113 (B).

CHAMIER and WELLS, J. CS.

References.—(a) 5 O. C. 345, 2 O. C. 244, and 3 C. 645 (P.C.), *R.*

(3) S. 16—See No. 2, *supra*.

(4) S. 17—See No. 2, *supra*.

(5) S. 22—See No. 2, *supra*?

S. 22—I, 104.

Act XVII of 1876 (Oudh Land Revenue).

See I, Contract Act, No. 4.

S. 69—I, Civil Pro. Code, No. 161.

Ss. 108, 112 & 121—I, Pre-emption, No. 2.

- (1) *Ss. 161 to 177—Court of Wards—Disqualified proprietor.*

The group of Ss. (161 to 177)—in the Land Revenue Act, 1876, entitled "Ch. VIII, Courts of Wards" was not intended to interfere with the personal status or rights of an adult disqualified proprietor, who is neither idiot nor lunatic, except as regards the management of his property or anything expressly prohibited. There is no prohibition of a disqualified proprietor contracting debts or borrowing money, but he is not at liberty to create any charge upon his property without the sanction of the Court, **Dhanipal Das v. Raja Maneshwar Bakhsh Singh**, 4 C.J.L.J. 1 (P.C.) = 1 M.L.T. 205 = 3 A. L. J. 495 = 9 O.C. 188 = 8 Bom. L.R. 491 = 10 C.W.N. 849 = 16 M.L.J. 292 = 28 A. 570.

LORD DAVEY, LORD ROBERTSON, LORD ATKINSON, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

References.—11 M. I. A. 468, 9 I. A. 182 = 5 A. 142, *D.*

See, further, under CONTRACT ACT, No. 4.

- (2) *Ss. 219, 220—Act III of 1901 (N. W. P. and Oudh), Ss. 111, 112, 233, 234—Partition by Revenue Court, effect of—Jurisdiction of Civil Court to decree possession of land allotted in partition when no possession,*

6.—Oudh Acts.—(Continued).

Act XVII of 1876 (Oudh Land Revenue).— (Concluded).

or formal possession delivered by Revenue Court.

Held, that S. 234 of Act III of 1901 (N.W.P. and Oudh) does not affect the jurisdiction of the Court (Civil) to decree possession of the land allotted to a person under a partition duly made and confirmed by a Revenue Court. Under such a partition, a title is acquired by the person to whom the land has been allotted, on the basis of which the Civil Court can give him a decree for possession, irrespective of the question whether possession has been actually or formally delivered by the Revenue Court. Delivery of possession is not an essential part of the process of distributing the land but only ancillary to it, and a decree for possession given by the Civil Court cannot be said to distribute or affect the distribution of the land or partition. *Umar Khan v. Khadim Hussain*, 9 O. C. 76 (B).

SCOTT and CHAMBER, J. C.

Reference.—1 O. C. 225, *overruled*.

(8) S. 220—See No. 2, *supra*.

Act XVIII of 1876 (Oudh Laws).

(1) S. 3 (g)—See ACT III OF 1901 (N. W. P. AND OUDH LAND REVENUE, No. 3, 9 O. C. 227. *S. 27—I, Pre-emption, No. 2.*

(2) *Ss. 8 and 9—Pre-emption, suit for—“sub-division.” meaning of—*

In a suit for pre-emption, the village in dispute consisted of four parts known as *tarafs* A, B, C and D; these *tarafs* were entered in the *khasat* in the column headed “name of *thok* or *pattai*.” Separate lands were assigned to each *taraf*, every share lay wholly in one *taraf*, the revenue of each share was separately entered in the *khasat* and the revenue payable by each *taraf* was known.

Held that each *taraf* was a sub-division of the *mahal*.

The word “sub-division” in S. 8 of the Act includes a part made by a division of a town or a city and is not confined to a part made by division of part of a city into smaller parts, and the word “sub-division” in S. 9 of the Act means not only a part made by division of a part of a *mahal*, but also a part made by division of a *mahal*. *Hon’ble Raja Tasaduq Raza Khan v. Janki Saran*, 9 O. C. 211.

CHAMBER, J. C.

Reference.—7 O. C. 129, *R.*

6.—Oudh Acts.—(Continued).

Act XVIII of 1876 (Oudh Laws).—(Concl)

(2-a) S. 9—See No. 2, *supra*.

(3) *Ss. 9 and 10—Actionable claim—Share in a law suit sold—Seller’s doubtful right—Pre-emption.*

Held, that where property was not in possession of the vendor at the time of the sale and he had only a doubtful right to recover it, such a right, if sold, could not be considered a proprietary or under-proprietary tenure or a share of such tenure within the meaning of S. 9 of the Act, on the sale of which a right of pre-emption could be claimed. *Mirza Mohamed Abbas Ali Khan Bahadur v. A. Querret*, 9 O. C. 86 (B).

SCOTT and CHAMBER, J. C.

Reference.—21 C. 496 (F. C.), *R.*

(4) S. 9, cl. (5)—*Pre-emption against under-proprietor, proprietor’s suit for—Under-proprietor not residing in the village—Residence in the village community, member of lots, decision as to who is entitled by drawing.*

The plaintiff brought a suit for pre-emption in respect of an under-proprietary interest in a village of which he was the superior proprietor. The vendee held under-proprietary rights in the village but neither he nor the plaintiff resided in the village. *Held*, that, under S. 9 of the Act, the plaintiff and the vendee were members of the village community and were equally entitled to pre-empt the property. The question as to who is entitled to the property was decided by drawing lots. *The Hon’ble Raja Ali Mohammad Khan v. Ram Billa*, 9 O. C. 271 (B).

CHAMBER and GRIFFIN, J. C.

Reference.—5 O. C. 266, *R.*

(5) S. 10—See No. 2, *supra*.

(6) *Ss. 10 & 11—See PRE-EMPTION, No. 14, 9 O. C. 169.*

(7) S. 11—See No. 6, *supra*.

S. 15—I, 109.

S. 20 —”

S. 25—I, Jurisdiction (of Civil Courts), No. 49.

Chap II—

(8) To be subject to pre-emption under, the property must have been in actual possession of the vendor—See PRE-EMPTION, No. 45, 9 O. C. 381.

6.—Oudh Acts.—(Continued).

Act XXII of 1886 (Oudh Rent).

Ss. 17, 108 (9)—I, 106.

Ss. 22, 108 (4 and 18)—I, *Londlord and tenant*, No. 12.

- (1) Ss. 60 and 108, cl. (10)—*Under-proprietor, suit for possession by—Civil Court, jurisdiction of, in suit for possession as under-proprietor by one who has been ejected as ordinary tenant—*

The defendant, who had granted as a *shankalap*, a lease of a share in a village to the plaintiff, issued a notice of ejectment in respect of the share, and the plaintiff's suit to contest the notice having been dismissed, ejected him under the provisions of S. 60 of the Act. The plaintiff, on the allegation that he was an under-proprietor of the share under the lease, sued the defendant for recovery of possession.

Held, that the suit was not one such as is referred to in cl. (10) of S. 108 of the Act and was cognizable by a Civil Court. *Sheo Palan v. Raja Rampal Singh*, 9 O.C. 87 (B).

SCOTT and WELLS, J. CH.

References.—8 O.C. 174, R. 4 O.C. 264, D.

- (2) S. 108—*Civil Court, jurisdiction of—Declaration that the plaintiff is entitled to get from his co-sharer the amount due from him on account of the arrears of revenue, suit for—Specific Relief Act, S. 42.*

A suit by a co-sharer for a declaration that another co-sharer is liable for the payment of arrears of revenue to the extent of his share does not lie in the Civil Court, but under S. 10 of the Act, is cognizable only by the Revenue Court; it is also barred under S. 42 of the Specific Relief Act, as the plaintiff can sue for the arrears alleged to be due from the defendant *Babu Bhan Pratab Sahi v. Mahant Binkesh Das*, 9 O.C. 232.

SCOTT, J. C.

S. 108 (9) (c)—I, 107.

(8) S. 108, cl. (10)—*See* No. 1, *supra*.

S. 108 (10)—I, 107.

- (4) Ss. 152 and 154 cl. (2)—*Under-proprietary right, sale of, in execution of decree for arrears of rent against transferee, to whom the right was transferred subsequent to the decree, but before attachment—Declaration refused on ground of plaintiffs'*

6.—Oudh Acts.—(Continued).

Act XXII of 1886 (Oudh Rent).—(Concl'd.)

The defendants obtained a decree for arrears of rent against under-proprietors. Subsequently, the under-proprietors sold the property, in respect of which the decree for arrears of rent had been passed, to the plaintiffs, there being a provision in the sale-deed that, out of the purchase-money, Rs. 4,000 should be left with the plaintiffs for payment of the rent due to the defendant. The plaintiffs did not pay the money, but, when the defendants sought to sell the property, they objected to the sale. On their objection being dismissed, they brought the present suit to have it declared that the property was not liable to be sold in execution of the decree for arrears. It was contended on their behalf that the defendants ought to bring a fresh suit for arrears against them, but could not follow up the property in their hands.

Held (*per* WELLS, A. J. C.), that the plaintiffs' suit being a vexatious suit, brought in order to retain money which they are justly liable to pay, and the necessity for declaration having arisen from their own dishonest conduct, it should be dismissed; also that, having regard to the provisions of Ss. 152 and 154, cl. (2) of the Act, the plaintiffs were liable in the same way and to the same extent as their transferors and that the property in suit was liable to be sold in execution of the decree for arrears of rent.

Held (*per* SCOTT, J. C.), that, having regard to the conduct of the plaintiffs, they were not entitled to the declaration prayed for, further, that, having regard to the provisions of Ss. 152 and 154 of the Oudh Rent Act, a decree-holder cannot execute a decree for rent against an under-proprietor, against the under-proprietary right, which has been transferred subsequent to the decree, but, before attachment, but that he has a right of suit against the transferee for the arrears. *Musammatt Atma Dei v. Pandit Bakht Narain*, 9 O.C. 185 (B).

SCOTT and WELLS, J. CH.,

- (5) S. 154 (cl. 2)—*See* No. 4, *supra*.

Act IX of 1889.

- (1) S. 9, cl. (4) and S. 15—*Chowkidari rate contract by under-proprietor to pay—Act of 1889 (Oudh), S. 14—Patwari, rate, contract by under-proprietor with superior proprietor to pay.*

6.—Oudh Acts.—(Concluded).

Act IX of 1889.—(Concluded).

The appellant, who was the superior proprietor, sued the respondent, who was the under-proprietor to recover a certain sum of money on account of *Patwari* and *Chowkidari* rates. He based his claim on a contract between the parties, under which the respondent had undertaken to pay the *Patwari* and *Chowkidari* rates. This contract was entered into at the first settlement and was embodied in the Settlement Court's decree of 1866.

Held, that, having regard to S. 9, cl. (4) of Act IX of 1889, S. 15 of the Act did not apply and the appellant was not entitled to recover the *Patwari* rate (a).

Held, also, that under S. 14 of Act V of 1884, the appellant was entitled to recover the *Chowkidari* rate. **Mahant Har Charan Das v. Thakur Prithiraj Singh**, 9 O. C. 63 A. (B).

SCOTT and RYVES, J. CS.

Reference.—(a) R.A.R. No. 73, F.

(2) S. 15—See No. 1, *supra*.

Act V of 1884.

S. 14—See Act IX of 1889 (OUDH), No. 1, 9 O.C. 63 A (B).

Act IV of 1901.

S. 7 A—I, *Jurisdiction (of Civil Courts)*, No. 49.

7.—Punjab Acts.

Act IV of 1872 (Punjab Laws).

(1) So called mortgage really a sale—Whether the transferor (mortgagor), has right of pre-emption—See PRE-EMPTION, No. 33, 145 P. R. 1906.

(2) S. 9—See PRE-EMPTION, No. 20, 28 P. R. 1906.

(8) S. 10—Custom—Pre-emption—Presumption—Village.

Held, that there is no presumption under S. 10 of the Act in favour of the existence of right of pre-emption upon sale of a land in a *Chak* in the Chenab colony, unless the *Chak* and the persons living in it and owning property in it could be called a village community. The recent creation of the *Chaks* renders the existence of an actual custom of pre-emption an impossibility.

Held, that, having regard to the history of the *Chak* No. 296, also called manza Montgomerypur, in the Jhang District, a custom of

7.—Punjab Acts.—(Continued).

Act IV of 1872 (Punjab Laws).—(Concluded).

pre-emption could not be presumed to exist in the *Chak* (a). **Tika Ram Narain Singh v. Sewak Ram**, 110 P.L.B. 1906.

JOHNSTONE and LAL CHAND, JJ.

References.—(a) 66 P.R. 1903=90 P.L.R. 1903, 108 P.R. 1889, 21 P.R. 1900=P.L.R. (1900), p. 170, 27 P.R. 1897, 74 P.R. 1897, 70 P. R. 1898, 24 A. 420, 26 A. 574, and 30 C. 635, R.

(4) S. 10—See PRE-EMPTION, No. 17, 22 P. R. 1906.

(5) S. 11—See CUSTOMS, No. 1, 42 P.R. 1906.

(6) S. 11—See CUSTOM (PECULIAR TO PUNJAB), No. 24, 57 P.R. 1906.

(7) S. 11—See CUSTOM (PECULIAR TO PUNJAB), No. 86, 68 P.R. 1906.

(8) S. 11—See CUSTOM (PECULIAR TO PUNJAB), No. 45, 99 P.R. 1906.

S. 11.—I, 108.

(9) S. 12—Right of pre-emption, presumptions obtaining with respect to, under—See CUSTOMS (PECULIAR TO PUNJAB), No. 29, 37 P. R. 1906.

See, also, I, *Pre-emption*, Nos. 6, 7 and 8.

S. 12 (c)—I, 108.

S. 12.—I, 786.

Act XIII of 1884 (Punjab Municipalities).

See I, *Act XX of 1891 (Punjab Municipal Act)*, No. 1.

Act XVIII of 1884 (Punjab Courts).

(1) S. 39 (a) appeal lies not to District Judge but to Divisional Court under, from unclassified suit of over Rs. 100 in value.—See SMALL CAUSE COURTS (PROVINCIAL ACT, IX OF 1887), No. 10, 134 P. R. 1906.

Ss. 40 (1) (b), 44, 70 (1) (b)—I, *Custom (Punjab)*, No. 24.

(2) S. 70—See REVISION, No. 2, 29 P. R. 1906.

S. 70—I, 109

(3) S. 70 (1) (a)—*Erroneous finding as to question of limitation, whether precludes revision*.

*A finding that an application or a suit is barred by limitation, does not necessarily, in every case, preclude the remedy by revision, if it does not appear that all the necessary matters essential for arriving at such conclusion have been fully and properly taken into considera-

7.—Punjab Acts.—(Continued).

Act XVIII of XVIII 1884 (Punjab Courts).—(Continued).

tion. In the case of an application for setting aside an *ex parte* decree, before the stringent provisions of Art. 164 could be applied to it, it must be clearly found that there was a proper and valid issue of process in conformity with the provisions of the Code of Civil Procedure (a), and the process issued under S. 268 of the Code contemplating an attachment of judgment-debtor's property, an order directed merely against the debtor of the judgment-debtor and omitting to prohibit the creditor from receiving the debt is not a proper and valid process and such omission is a material irregularity within S. 70 (a) of the Act so as to justify interference on revision thereunder. **Sadha Ram v. Karam Chand**, 118 P. R. 1906.

LAL CHAND, J.

References:—(a) 5 P. R. 1897, & 82 P. R. 1878, R.

(4) S. 70 (1) (a)—*Erroneous finding on a point of limitation—Whether Chief Court can interfere in revision.*

The lower Court dismissed a suit, as barred under the Limitation Act, whereas the Punjab Loans Limitation Act (I of 1904) was in fact applicable to the suit. The application to the case, of the Limitation Act of 1877, which obviously did not apply, makes the case fall within the class of cases where the Chief Court can, and ought to, interfere in revision. (a). **Par-meshari Das v. Kaka**, 121 P. R. 1906.

CHITTY, J.

References:—(a) 26 P. R. 1889, F. 97 P. R. 1905, D. 90 P. R. 1904. R.

(5) S. 70 (1) (a), extraordinary jurisdiction under, whether Chief Court would exercise in a case under S. 295, Civ. Pro. Code—See Civ. Pro. Code, No. 170, 128 P. R. 1906.

(6) S. 70 (1) (b)—Suit for possession by purchaser of equity of redemption—Appeal—See LIMITATION ACT, No. 102, 130 P. R. 1906.

(7) S. 70 (b) as amended—Revision—Civil cases—Question of law—Mortgage in good faith and for consideration.

One H mortgaged the land in suit to his mother, defendant No. 4, who sub-mortgaged the same to the father of the plaintiff. On the suit of the plaintiff for possession of the

7.—Punjab Acts.—(Continued).

Act XVIII of 1884 (Punjab Courts).—(Concl'd).

land, widow and mother of H pleaded that both the mortgage and the sub-mortgage were fictitious and without consideration, and the suit was dismissed. The plaintiff applied for revision under S. 70 of the Punjab Courts Act. It appeared that the plaintiff's father had paid a portion of the mortgage money at the time of registration of the sub-mortgage in his favor. The widow of H had admitted, in a written statement filed by her in Court, the receipt of the consideration, she had sued a tenant of the land for rent and obtained a decree and was at times in possession of the property. The Chief Court admitted the revision as an appeal under clause (b) of S. 70 of the Punjab Courts Act to determine the questions whether the plaintiff's father was an innocent mortgagee, and, if so, what was the effect of this circumstance, and dismissed the appeal, holding that the evidence on record justified the conclusion of the lower Courts. **Gurdita Mal v. Hari Singh**, 6 P. L. R. 1906.

JHONSTONE, J.

S. 70 (1) (a) & (b)—I, 785.

S. 70 (1) (b)—“ ”

S. 70 (1), (a), (b)—“ 786.

Act XVI of 1887 (Punjab Tenancy).

Ss. 5, 53, 55 and 60—I, 109.

(1) Ss. 9 & 57—Mortgage of occupancy rights—Mortgagee's right after death of mortgagor—acquisition of right of occupancy—Lapse of time.

Where an occupancy tenant, who has mortgaged his rights with possession, dies, the occupancy rights, as such, become extinct on his death and, consequently, the subsequent status of his mortgagee in possession is that of a mere tenant-at-will of the proprietor. On the strength of such subsequent enjoyment, however long it may be, the mortgagee cannot set up a title adverse to that of his landlord, as mere lapse of time cannot alter the status of the former as a tenant-at-will of the latter. **Slob Sahai v. His Highness Maharaja Balbir Singh of Faridkote**, 8 P. R. 1905 (Rev.) = 67 P. L. R. 1906.

WALKER, F. C.

(2) S. 14—Right of mortgagee put in possession through Court.

7.—Punjab Acts.—(Continued).

Act XVI of 1897 (Punjab Tenancy).—(Continued).

In execution of a decree, which a mortgagee had obtained in the Civil Court, he was put in formal possession of the land. *Held*, that he became a "landlord" within the meaning of S. 14 of the Act and was entitled to sue persons in possession of the land for rent as for use and occupation thereof and the fact that the Revenue Officers failed to make the necessary alteration in the entries in the Revenue papers cannot affect his position in any way. *Mul Chand v. Mul Chand*, 6 P. R. 1905 (Rev.) = 63 P.L.R. 1906.

WALKER, F. C.

- (3) S. 24—Landlord and tenant—Suit for enhancement of rent by a majority of landlords, maintainability of.

The majority of a body of joint proprietors may institute a suit against an occupancy tenant for enhancement of rent and it is not necessary that the entire body of proprietors must join together as plaintiffs in such a suit. The landlord is the whole proprietary body and the majority of them may sue as representing such body. There is no rule or provision of law laying down that perfect unanimity is necessary before such a suit can be maintained. (a). *Gurdit Singh v. Ganpet*, 3 P. R. 1905 (Rev.) = 54 P.L.R. 1906.

WALKER, F. C.

References.—(a) 77 P. R. 1883 and 1 P. R. 1895 (Rev.), R.

- (4) S. 41—Landlord and tenant—Suit in ejectment on ground of non-payment.

Under a mortgage deed, plaintiff, the mortgagee left the possession of the land mortgaged to him, with his mortgagors, defendants 1 to 8, for purposes of cultivation, the latter undertaking to pay a fixed rent to him with a proviso that, in default of payment of rent by them, the mortgage would be foreclosed. Plaintiff, now, sued all the defendants in ejectment. The Commissioner agreed with the first Court in deciding that, since defendants 9 to 17 were the successors in interest of defendants 1 to 8, so as plaintiff was concerned, the relation of landlord and tenant existed between the plaintiff and all the defendants, but found that, under the deed of mortgage, on which this relation was based, the remedy of ejectment was not open to the plaintiff. *Held*, on revision, that

7.—Punjab Acts.—(Continued).

Act XVI of 1897 (Punjab Tenancy).—(Continued).

the right to eject a tenant as will is an inherent right of the tenure, and it is not excluded by the special remedy provided for by the mortgage deed. Plaintiff has, against the defendants, his tenants, the ordinary remedies open to a landlord, viz., a suit for recovery of rent or for ejectment and there is nothing to prevent plaintiff putting either of these remedies in force. *Radha Mal v. Shera*, 10 P. R. 1906 (Rev.) = 60 P.L.R. 1906.

WALKER, F. C.

- (5) S. 53, 77—Mortgage of occupancy rights—Joint sale of the rights to landlord—Suit by mortgagee against landlord whether cognizable by the Civil Court.

This suit was brought for possession of land by the plaintiff, to whom the occupancy rights thereof had been mortgaged with possession. Subsequent to the mortgage, a sale of the said occupancy rights was attempted to be effected in the manner provided for by S. 53 of the Tenancy Act. Application was made to the Revenue Officer, under cl. 8 of that section, to have the value of the land fixed but the course of procedure prescribed by that section, was not followed out, as the said value happened to be determined by the parties by private agreement. Plaintiff alleged that the sale to the defendant (landlord) was illegal, the provisions of S. 53 not having been complied with, and prayed that defendant be removed from the possession of the occupancy rights and that possession be restored to him (plaintiff), defendant being treated as a trespasser. Defendant's objection that the suit was not cognizable by a Civil Court was thrown out, it being held that the suit, not arising out of any lease or conditions of tenure between the landlord and the tenant as such, was one cognizable by a Civil Court, and not one within the jurisdiction of the Revenue Courts.

Held, also, that, since there was no fixing of price by the Revenue Officer nor any deposit of money in Court by the landlord, the provisions of S. 53 had not been complied with and the right of occupancy did not become extinct and plaintiff was, therefore, entitled to the relief claimed. *Shag Mal v. Pir Baksh*, 32 P. R. 1906.

JOHNSTONE and BATTIGAN, JJ.

References.—43 P. R. 1904, 44 P. R. 1891, R.

7.—Punjab Acts.—(Continued).

Act XVI of 1937 (Punjab Tenancy).—(Continued).

(6) S. 57—See No. 1, *supra*.(7) S. 59—*Claim for possession of land by its proprietor—previous joint occupation by the last tenant, presumption arising from—Judgment not inter partes, admissibility in evidence of.*

This was a claim by a proprietary body for possession of certain lands on the ground of lapse of occupancy rights on the death of the last occupancy tenant. The defendants contended that they were entitled to the land as collateral heirs of the last occupancy tenant. It was clear from the records that the deceased tenant, though entered as an owner jointly with his brother in the summary settlement, was recorded as an occupancy tenant at the time of the first regular settlement and that, at the period of such settlement, the said deceased tenant was in sole possession of the land in question. *Held*, that there was a strong presumption that the whole of the land in dispute, which was held exclusively by the last tenant, at the time of regular settlement, and of which he was recorded as *maurusi* was inherited by him from his father (a) and, consequently, the defendants as his heirs had a better right to the lands than the plaintiffs.

Held, further, the above presumption was not rebutted by certain prior judicial proceedings, which related to the land but to which the present plaintiffs were not parties and that the judgments passed in those proceedings was not relevant to the present dispute (b) under S. 13 or any other section of the Evidence Act, S. 13, referring to cases where the question is as to the existence of a right or custom, has no application to the present case, where no such question has arisen. *Sobha Singh v. Nand Singh*, 56 P.R. 1906=101 P.L.R. 1906.

LAL CHAND, J.

References.—(a) 62 P.R. 1882, F. (b) 6 C. 171 (F.B.), R.

(8) S. 60—See OCCUPANCY RIGHTS, No. 2, 52 P.R. 1906.

(9) S. 60—*Alienation by tenant of right of occupancy to one of several landlords—Suit by other landlords for possession by cancellation of alienation—Limitation Act, arts. 120 and 91.*

7.—Punjab Acts.—(Continued).

Act XVI of 1937 (Punjab Tenancy).—(Continued).

Where a tenant alienates his right of occupancy in favour of one of the several proprietors of the land, without the consent of the others, express or implied, so far as regards the question of alienation, the alienee must be regarded as an outsider and such alienation to him cannot affect the rights of the other proprietors, as whose instance the transfer is voidable, and they could claim possession from the alienee, after cancellation of the sale to him, by means of a suit in the Revenue Court under S. 40 of the Act and the period of limitation for such a suit under that section is not three years under art. 91 of the Limitation Act but 5 years under art. 120 (a). *Kuria v. Nandak*, 7 P.R. 1906 (Rev.)=68 P.L.R. 1906.

WALKER, F.C.

References.—(a) 185 P.R. 1898 and 1 P.R. 1898 (Rev.), F.

(10) S. 77—See No. 5, *supra*.

(11) S. 77 (3)—*Suit for recovery of money paid to mortgagor for land revenue, whether within the jurisdiction of Revenue Courts—Suit in Revenue Court and subsequently in Civil Court—Right of parties to set up the want of jurisdiction of the Revenue Court.*

The terms of S. 77 (3), which ousts the jurisdiction of Civil Courts must be construed strictly; cl. (i) must be taken to include suits *ejusdem generis* with those which are mentioned above it, and be confined to suits between parties *quo* landlord and tenant. It cannot be held to include a suit, the claim in which arises out of a contract of mortgage, merely because, between the mortgagor and the mortgagee, there subsists also the relationship of landlord and tenant. In other words, the claim in the suit must be directly referable to the lease or the conditions on which the tenancy is held. *Held*, also, a person who has selected the Revenue Court as his *forum*, has insisted throughout on its jurisdiction and has prosecuted the suit there up to the Court of final appeal, but has ultimately failed, not on the question of jurisdiction, but on the merits, should not be permitted, on the ground of want of jurisdiction in the Revenue Court, to ignore the previous proceedings *ejusdem* and prosecute his claim *de novo* in a Civil Court. *Jaimat Mal v. Khair Muhammad*, 126 P.R. 1906.

ROBERTSON & CHITTY, JJ.

7.—Punjab Acts.—(Continued).

Act XVI of 1887 (Punjab Tenancy).—(Continued).

References:—10 W.R. 6, 8 M.H.C.R. 14 & 6 Q.B. 155, R.

(12) *S. 77 (3) (d)*—*Exchange of occupancy holdings—Suit by occupancy tenant for declaration that he is occupancy tenant by exchange—Jurisdiction.*

A suit by a person, claiming to be an occupancy tenant of specific land, for a declaration that he is an occupancy tenant, having exchanged his original occupancy holding with the original occupancy tenant of the land in suit, is a suit by a tenant to "establish a claim to a right of occupancy" under S. 77 (3) (d), and is, therefore, cognizable only by a Revenue Court.

There is no authority for the contention that S. 77 (3) (d) applies only to cases of occupancy rights acquired under S. 5 or S. 6 of the Tenancy Act, and the language of the subsection indicates no such limitation.

The question of jurisdiction must be settled with reference to the plaint. (a) *Attar Singh v. Rala Singh*, 139 P. R. 1906.

REID, C.J.

References:—89 P.R. 1895, R. (a) 106 P.R. 1900, F.

(13) *Ss. 77 (3)(k), 82—Suit for mesne profits—Jurisdiction of Civil and Revenue Courts—Suit by mortgagee entitled to possession—Suit by sharer for profits—Review, second application for—Limitation Act, 1877, S. 5—Delay, sufficient cause for.*

Plaintiff's allegation, in this case, was that, under a mortgage to him of the proprietary possession, a share of the profits of the estate was due to him. *Held*, assuming that the plaintiff was entitled to the profits of the land in question as mortgagee, he would come under the definition of land-owner in S. 3 (2) of the Punjab Land Revenue Act and should, also, be regarded as a 'co-sharer' within the meaning of that term in S. 77 of the Punjab Tenancy Act. The present suit brought by the plaintiff for recovery of mesne profits ought, therefore, to be regarded as a suit by a co-sharer for a share in the profits of the holding, within the meaning of S. 77 (3) (k) of the Act and is cognizable by a Revenue Court. *Held*, also, that it is within the power of the Financial Commissioner to review, on an application for that purpose, under S. 629 of the

7.—Punjab Acts.—(Continued).

Act XVI of 1887 (Punjab Tenancy).—(Continued).

C.P. Code and S. 88 of the Act, the order of his predecessor, which rejected a previous petition for revision put in by the plaintiff before the latter. The second application, in this case, though presented long out of time, was admitted on the ground that, since owing to the conflicts of the decisions between the Revenue and the Civil Courts, plaintiff had been placed in the position that he was being denied adjudication of his claim in both, he had "sufficient cause," under S. 5 of the Limitation Act, for not having presented the application within the period of limitation prescribed therefor. *Maya Das v. Jowala Sahal*, 9 P.R. 1906 (Rev.) = 65 P.L. R. 1906.

WALKER, F.C.

References:—15 C. 482; 57 P.R. 1892 and 54 P.R. 1901 (F.B.), F.

S. 77 (3) (d)—I, 111.

S. 77 (3) (K), 82—I, 112.

(14) *Ss. 80 (b), 88—Order of remand by Collector as appellate Court, applicability of Ss. 562, 588 (28), 589, C. P. Code, to.*

When, on an appeal to a Collector as a Revenue Court, he passes an order of remand, under S. 562 of the C.P. Code, further appeal from such order of the Collector lies to the Court of the Commissioner of the Division under S. 80 (b) of the Act and not to the Financial Commissioner under Ss. 588 (28) and 589, C. P. Code, because the being matter provided for in the Act, S. 88 (2), does not make the Civil Procedure Code applicable. *Kali Das v. Brahman*, 1 P. R. 1905 (Rev.) = 53 P. L. R. 1906.

WALKER, F. C.

(15) S. 82—See No. 13, *supra*.

(16) S. 88—See No. 14, *supra*.

(17) *S. 98 (1)—Appeal—Appeal against order S. 98—Jurisdiction of Commissioner to decide the suit on merits.*

An Assistant Collector, with the previous sanction of the Collector, under S. 98 of the Act, referred the defendants to the Civil Court. Against the Collector's order sanctioning leave to refer them to the Civil Court, the defendants appealed to the Commissioner, who went into the merits of the suit and dismissed it. *Held*,

7.—Punjab Acts.—(Continued).**Act XVI of 1887 (Punjab Tenancy).—(Concluded).**

that, in the appeal, the Commissioner was bound to confine himself to the question, whether the sanction had been properly given or not and that he had no jurisdiction to decide the suit on the merits. **Ganga Singh v. Badar-ud-din**, 2 P. R. 1905 (Rev.) = 57 P.L.R. 1906.

WALKER, F. C.

Act XVII of 1887 (Punjab Land Revenue).

- (1) *Right of a person to apply for partition under, decision of, can be given by Civil Court, as on a question of title under S. 158.*

Defendant* having applied to the Revenue authorities for partition of certain land and plaintiffs having objected, the Revenue Court, for the reason that a question of title was involved; gave plaintiffs time to bring a Civil suit. This suit was thereon instituted for a declaration that the defendants had no right to have the land partitioned. *Held*, the Divisional Judge was entitled to decide, and justified in having decided, that the defendants had no right to apply for partition because, the question, whether a man holds such an interest in a plot of land as entitles him to ask for partition under the Land Revenue Act, is a question of title and, under S. 158 of the Act, the Civil Court can, in connection with a partition case, decide such questions of title. **Prabhu v Maya**, 104 P.R. 1906 = 185 P.L.R. 1906.

JOHNSTONE and RATTIGAN, JJ.

- (2) *S. 37—Record of rights, variations in—*

It is not within the scope of a Revenue Officer, during mutation proceedings, to cause alteration of any entry in record of rights, with regard to the payment of rent, when the matter is in dispute. **Gujar Khan v. Amir Bas**, 4 P. R. 1905 (Rev.) = 58 P.L.R. 1906.

WALKER, F. C.

- S. 77 (3), cl. (1) I, 113.*

- (3) *Ss. 116, 117—Jurisdiction of Civil and Revenue Courts—Question of title—Measure of right—Common land, partition of—Declaratory suit as to measure of right.*

The plaintiff sued for a declaration that the land in suit was joint property of the parties liable to be partitioned according to revenue holdings and not according to ancestral shares.

7.—Punjab Acts.—(Continued).**Act XVII of 1887 (Punjab Land Revenue).—(Concluded).**

Held, that the suit was cognizable by Civil Court, for the question of measure of right is a question of title within the meaning of Ss. 116 and 117 of the Punjab Land Revenue Act. **Raja Fazal Dad Khan v. Ata Muhammad**, 46 P.L.R. 1906.

ROBERTSON and KENSINGTON, JJ.

References.—120 P.R. 1880, 92 P.R. 1881, 181 P.R. 1882 and 150 P.R. 1890, R.

Ss. 116 and 117—I, 114.

Rule under, Rules No. 177 (iii) (b) and 179—I, 114.

(4) *S. 117—See No. 3, supra.*

Act XX of 1891 (Municipalities).

I—114 to 116.

Act XII of 1896 (Punjab Excise).

Agreement of partnership entered into by a licensee under, whether valid—See CONTRACT ACT, No. 10, 114 P.R. 1906.

Act I of 1900 (Punjab Limitation Act).

- (1) *Operation of—*

A childless proprietor mortgaged the land in suit with possession to the defendant's father on the 4th January, 1887. Mutation was attested by the Tahsildar on the 8th April, 1887. The proprietor died in October, 1903, and his collateral's filed a suit for possession of the land in suit on the 23rd February, 1904. It was pleaded that the suit was barred by limitation.

Held, that the plea was valid and the suit was barred under the Act, not being brought within twelve years from the date on which the mortgage was attested by the Tahsildar. The act was applicable to the case, the proprietor having died after the Act came into force. **Rasul Bakhsh v. Nabi Bakhsh**, 91 P. L. R. 1906.

LAL CHAND, J.

Act XIII of 1900 (Punjab Alienation of Land).

- (1) *S. 4, effect of notification issued under—on the personal law of Koreshtis in a particular locality—See CUSTOM (PUNJAB), No. 6, 5 P.R. 1906.*

- (2) *S. 9 (3), whether, applies to mortgage, by one not a member of an agricultural tribe—S. 9 (1) and (2), scope of.*

7.—Punjab Acts.—(Concluded).

Act XIII of 1900 (Punjab Alienation of Land). —(Concluded).

On the question, whether S. 9 (3) of the Act applies to proceedings instituted, after the Act came into force, for the enforcement of a mortgage (by conditional sale) effected by a person, who is not a member of an agricultural tribe, *held*, that since the said sub-section extends only to mortgages to which sub-s. (1) or sub-s. (2) applies, and those latter cover, specifically, only mortgages by members of an agricultural tribe, sub-s. (3) does not apply to a suit on a mortgage, where the mortgagor is not a member of an agricultural tribe. *Kala v. Nema Mal*, 64 P.R. 1906.

REID, J.

(3) Specific performance of contract of sale entered into before—See SPECIFIC PERFORMANCE, No. 1, 27 P.L.R. 1906.

(4) Alienation by a person entering a religious order—Ancestral property.

The Punjab Alienation of Land Act restricts the power of alienation of a member of an agricultural tribe, with regard to ancestral property in his hands, and the fact of such a member entering a religious order and becoming or calling himself a *Yaguir* cannot be held to remove the restrictions so imposed by the Act on his power of alienating his ancestral property. *Sant Ram v. Surup Das*, 5 P.R. 1905 (Rev.) = 62 P.L.R. 1906.

WALKER, F.C.

See, also, I, 116 & 117.

Act I of 1904 (Punjab Loans Limitation).

(1) Date on which the act came into force.

The Punjab Loans Limitation Act, 1904, came into force on the 23rd June, 1904. Where the limitation for a suit under Indian Limitation Act, 1877, has expired before that date, the claim is not revived by the operation of the former Act.

The date of first publication of the Punjab Loans Limitation Act, 1904, as given in the Act published in the Punjab Record is erroneous, so also is the date given in the Act published by the Superintendent of the Government Press, Punjab. *Kham Singh v. Hakim Singh*, 15 P.L.R. 1906 = 97 P.R. 1906.

CLARK, C.J.

8.—N. W. P. Frontier Acts.

Act II of 1903 (Bundelkhand Alienation of Land Act).

(1) S. 2—Mortgage by conditional sale—Conditional sale clause struck out on reference to Collector—Jurisdiction of Civil Court.

A suit was brought in a Civil Court for foreclosure of a mortgage by conditional sale, to which S. 9 of the Bundelkhand Alienation of Land Act, 1903, applied. The Civil Court made a reference to the Collector under clause (3) of S. 9, who, with the concurrence of the mortgagee, struck out the conditional sale clause from the mortgage in suit. *Held*, that the Civil Court was not *functus officio*, when it had made a reference to the Collector; but, after the Collector had struck out the clause in the plaintiff's deed providing for conditional sale, it then became the duty of the Civil Court to pass a decree for the only relief which it could then grant, namely, a simple money decree for repayment of the defendant's debt. *Baldeo Prasad v. Shoo Nandan*. A.W.N. (1906), 14 = 3 A.L.J. 743.

STANLEY, C.J. and BANERJI, J.

(2) S. 9 (3)—Decree before passing of the Act—but not order absolute—effect of.

Where a mortgagee in Bundelkhand had obtained a decree for foreclosure, before the passing of Act II of 1903 (Local), but had not obtained an order absolute when the Act was passed, *held*, that he was only entitled to a simple money decree and not an order absolute for foreclosure. *Durga Prasad v. Musamat Lashhi*, 3 A.L.J. 738 = A.W.N. (1906), 271.

AIKMAN, J.

Act of State.

I, 117.

Ad interim protection.

See, I, Practice (Misc. Cases), No. 1.

Administration.

Obtaining probate of will constitutes part of the cause of action in a suit, *See* WILL, No. 5, 1 M.L.T. 71.

See, I, Hindu Law (Will), No. 5.

See, also, I, 118.

Administration by Court.—I, 119.

Administration of trust.

I, Trust, No. 1.

Administration.

- (1) *Jurisdiction of High Court—Fraudulent decrees and deeds, setting aside of.*

When the primary object of a suit is the administration of an estate of a deceased, who was resident within the jurisdiction of the Court, within which jurisdiction the principal executor resides and the actual administration goes on, the Court is competent to order administration of the estate and, as ancillary to such an order, to set aside deeds obtained by the fraud of the executor.

If, for the due administration of the estate, it is necessary to set aside fraudulent leases of land outside the territorial limits of the jurisdiction of the Court in which the administration-suit is pending, that Court is competent to set aside such leases.

A decree granted by one Court may be impeached on the ground of fraud before another Court, if the latter Court had, apart from the decree, jurisdiction to deal with the matter. *Benode Bahary Bose v. Nistarinee Dasl*, 2 C.L.J. 180 (P.C.)—9 C.W.N. 961—15 M.L.J. 331—7 Bom. L.R. 387—33 C. 180—32 I. A. 193.

LORD DAVIN, LORD ROBERTSON and SIR ARTHUR WILSON.

Administrator.

- (1) *Final decree—Administrator pendente lite, position of—Termination of his—Executor de son tort—Principles, of applicable to Hindus.*

The functions of an Administrator *pendente lite* terminate on the pronouncement of the final decree (a).

The principles of English Law relating to an *Executor de son tort* are equally applicable to Hindus (b). *Radhika Mohon Roy v. K. S. Bonnerjee*, 10 C. W.N. 566.

BODILLY, J.

References.—(a) L.R. (1894) P.D. 264, F., 6 P.D. 29, H. (b) Ind. Jur. 3 N.S. 235, F., 17 C. 690-9, 4 S. 222, 24 M. 454, H.

(2) Person other than an, when could sue for debts due to estate—See Act V of 1881, No. 2, 3 L. B. R. 192.

See, also, I. Civil Pro. Code, No. 27.

Administrator-General's Act.

See Act II of 1874.

Adoption.

- (1) *Gayawal priests, custom amongst—Agreement between adoptive mother and adopted son, not depending upon the validity of the adoption—Adoption 'proved' invalid—Revocation of agreement—Agreement, if revocable at will, when parties contemplate revocation on the happening of contingencies—Contract of service—Termination on notice—Civil Court's jurisdiction—Employment of priest.*

Plaintiff, the widow of a Gayawal priest purported to adopt the defendant, a married man, 24 years of age, in accordance with an alleged custom by which, it was said, the childless widow of a Gayawal priest is allowed to make such an adoption in order that the adopted son may get his feet worshipped by the clientele of her family for her own immediate benefit and ultimately for the benefit of the adopted son, who takes by inheritance her estate as well as the estate of her husband. The son so adopted was, it was further alleged, liable according to the said custom to be dismissed for misconduct. At the time of the adoption, the plaintiff executed a deed, which recited the fact of the adoption having been made pursuant to the above custom and specified the circumstances, under which the adoption might be cancelled. The alleged custom not having been established;

held, that the adoption was not valid either as a *dattak* or a *kistrina* adoption, the necessary rites and ceremonies not having been performed and the defendant having already been invested with the sacred thread, married and had a son at the time of adoption.

That the transaction was essentially a contract to enable the plaintiff to keep up her connection, spiritual as well as worldly, with her husband's clientele and to enjoy the benefits resulting from such connection, and this contract did not depend for its validity upon the validity of the adoption and was consequently enforceable.

That the contract was not determinable at the mere choice of the plaintiff. The contingency, which, in the contemplation of the parties, was to terminate the contract not having arisen, the plaintiff was not entitled to rescind the contract (a).

The contract, in this case was not a contract of service-terminable on notice.

Semble—The obligation to employ a specified priest is rather a matter of conscience than

Adoption.—(Concluded).

juristic obligation enforceable in a Court of law, **Mussat. Lachmi Dai Mohutain v. Kissen Lal Pahari Mahaton Gayal**, 11 C. W. N. 147 = 4 C. L. J. 537.

RAMPINI and MOOKERJEE, JJ.

References.—(a) L. R. 8 Ch. App. 940, 949; 48 L. R. A. 388. R.

(2)—by Jats in the Punjab with ceremonies—Adopted son's right to succeed to the property of his adoptive father's father when the adoptive father dies in the life-time of his father—See **Customs**, No. 3, 80 P. L. R. 1906.

(3) Widow's power of, when becomes incapable of execution—See **HINDU LAW (ADOPTION)**, No. 9, 4 C. L. J. 357.

(4)—by mother after the death of the son and son's widow, if valid—See **HINDU LAW (ADOPTION)**, No. 9, 4 C. L. J. 357.

See, further, **Cases under HINDU LAW (ADOPTION)**.

I, 666, under **Mahomedan Law (Adoption)**.

Advancement.

I, **Hindu Law (Will)**, No. 9.

Adverse possession.

(1) *Adverse possession against tenant where adverse to landlord—Tenant holding over when dispossessed—Right of landlord to sue trespasser—Limitation.*

When there is a current lease, and the tenant is dispossessed by a third party, time does not commence to run against the landlord until the expiration of the lease (a).

But, when the lease has expired and the tenant is holding over with the landlord's consent, and the possession of such third party is adequate in continuity, in publicity and in extent so as to show that it is possession adverse to the landlord, the latter is not precluded from determining the tenancy and suing the trespasser in ejectment, and his right to sue will be barred after 12 years of such possession (b). **Kishwar Nath Sahai Dev. v. Kali Sankar Sahai**, 10 C. W. N. 343.

MACLEAN, C. J., and GEIDT, J.

References.—(a) 9 C. 367 and 13 C. 101, F. (b) 4 C. W. N. 597, *Refd. to*.

(2) *Two trespassers—possession for 12 years—one claiming through the other.*

If the period of possession of a trespasser and his predecessor in title, who was also a tres-

Adverse possession.—(Continued).

passer, extends over a period of 12 years, he acquires an absolute title to the property of which he has been thus in possession. **Babu Ram v. Banke Bihari Lal**, 3 A. L. J. 494 = A. W. N. (1906), 184.

STANLEY, C. J. and BANERJI, J.

Reference.—24 A. 157, R.

(3) Where no case of acquisition of title by adverse possession was made in the plaint, nor was the question raised directly or indirectly in any of the issues, the plaintiff ought not to be allowed to succeed upon such a case, which was not made in the plaint (a).

To prove title to land by adverse possession, it is not sufficient to show that some acts of possession have been done; for the possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor (b).

The doctrine of constructive possession, applies only in favour of a rightful owner and must not, as a rule, be extended in favour of a wrong-doer, whose possession must be confined to land of which he is actually in possession (c).

Where land, which has been submerged, reforms and is identified as having formed part even by accretion of a particular estate, the owner of that estate is entitled to it (d). **Ananda Hari Basak v. Secretary of State for India in Council**, 3 C. L. J. 316.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 8 C. 975, *It.*, 14 C. 502, *cited*. (b) 27 C. 943. F., (c) 27 C. 221 and 24 C. 256, *R. and F.*, 29 C. 518, *R.* (d) 2 I. A. 28; 14 B. L. R. 268, *Appr.*

(4) *Burden of proof.*

When it is not shown that the defendant's possession began as of a tenant and it is not proved that the plaintiff received any rent from the defendant during twelve years prior to the filing of the suit, the plaintiff's suit for possession must be dismissed; for, the defendant's possession must be presumed to be that of an owner and adverse to the plaintiff.

Acknowledgment of plaintiff's title by writing, when made after the expiry of the period of limitation, or not signed by the defendant, does not save limitation. **Behari v. Sadho Mal**, 73 P. L. R. 1906.

LAL CHAND, J.

(5) *Co-sharers—Burden of proof.*

Adverse possession.—(Continued).

Held, that, ordinarily, in the case of property held in common, the possession of a co-sharer is the possession of all. In a case, in which co-sharers set up a title adverse to a co-sharer, it lies upon them to show at what time their possession became adverse or that there was clear and definite abandonment with intention. **Haji v. Gohna**, 39 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

(6) Landlord and tenant—House in abadi.

The fact that the tenant built a house in the *abadi* of a village and occupied it for over twelve years, is not sufficient to establish a title against a zamindar by adverse possession (a). **Jalkishan Singh v. Moti Chand**, 3 A.L.J. 627 = A.W.N. (1906), 258.

STANLEY, C.J. and BURKITT, J.

Reference.—(a) 1 A.L.J. 479, *Distd.*

(7)—by successive trespassers—Tacking of various periods of adverse possession—Succession by sale as to possessory interest of one trespasser by another.

Held, that a person, who was in possession of the property as a trespasser, is entitled to tack on to the period of his possession the period of the possession as trespasser of his predecessor in title through whom he claims. **Nageshar v. Shao Mangal**, 9 O.C. 280.

CHAMBER, J.C.

References.—9 O.C. 161 and 20 W.R. 114, *R.*

• (8)—of joint Hindu family property—See TRANSFER OF PROPERTY ACT, No. 7, 9 O.C. 55.

(9) Possession of a redeeming co-mortgagor, whether—See TRANSFER OF PROPERTY ACT, No. 96, 9 O.C. 9.

(10) Mere non-payment of rent for twelve years without any denial of the landlord's right, how far constitutes—See CIVIL PRO. CODE, No. 11, 16 M.L.J. 35.

(11)—against Hindu reversioner—suit by more remote reversioners on death of such reversioner—See LIMITATION ACT, No. 118, 106 P.R. 1906.

(12) Co-owner in symbolical possession—exclusive possession by other co-shares, whether adverse—See CO-SHARERS, No. 3, 4 C.L.J. 254.

(13)—against mortgagor, effect of, on mortgagee—See LIMITATION, No. 1, 10 C.W.N. 904.

(14) Houses as appurtenant to holdings—when possession will become adverse—See LANDLORD AND TENANT, No. 11, 3 A.L.J. 619.

Adverse possession.—(Concluded).

(15) See SPECIFIC RELIEF ACT (I OF 1877), No. 1, 33 C. 821.

(16) See case under CIVIL PROCEDURE CODE, No. 197, 7 Bom. L.R. 637.

(17) Government revenue defaulter—Share of defaulter let on farming lease—Share not claimed on expiry of lease—See LIMITATION ACT, No. 106, A.W.N. (1905), 282.

See, also I, 121 122 and 123, under Adverse Possession and

I, Landlord and Tenant, No. 16.

" Limitation Act, Nos., 114, 116.

" Hills, No. 1.

" Hill Tracts, No. 1.

" Lambardar, No. 1.

" Transfer of Property Act, No. 52.

" Mortgage (Redemption), No. 5.

" Mahomedan Law (Wakf), No. 1.

" Civil Pro. Code, No. 215.

Advocate.

(1) Liability of an—to punishment by High Court for misconduct—Publication of articles in Newspaper defaming Judges—See LETTERS PATENT (N.W.P.), No. 2, 8 A.L.J. 592.

(2) Power of High Court to remove an—from roll—See RULES OF THE N.W.P. (HIGH COURTS), No. 2, A.W.N. (1906), 226.

(3) Professional misconduct of—champertous agreement with client—See LETTERS PATENT (CALCUTTA), No. 1, 4 C.L.J. 259.

Advocate-General.

(1)—not to be called upon to make discovery on oath—See CIV. PRO. CODE, No. 278, 8 Bom. L.R. 565.

See, I, Administration, No. 2.

" Mortgage (Redemption), No. 28.

(2) Suit relating to charity—suit instituted by one person with the consent of the—Substitution of another plaintiff with the consent of the—See CIV. PRO. CODE, No. 281, 8 Bom. L.R. 751.

Affidavit—*I, Practice (of High Court), No. 2.*

Agent.

Unauthorised agent untruly representing himself as authorised, liability of, on failure to fulfil contract—See CONTRACT ACT (TRAVANCORE), No. 3, 21 T. L. R. 73.

See, also, I, Transfer of Pro. Act, No. 35.

" Company, No. 4.

Agent.—(Concluded).

- See, also, I, Non-joinder of Parties, No. 4.*
„ Rent Recovery Act (Madras), No. 2.
„ Principal and Agent, No. 11.

Agra Tenancy Act.

See Act II of 1901 (N.W.P.)

Agreement.

(1)—to supply funds for suit, whether champertous and opposed to public policy—*See CONTRACT ACT, No. 8, 26 P.R. 1906.*

(2)—of parties to a suit to refer question to Court for decision—Decision of Court if appealable—*See COURT, No. 1, 10 C.W.N. 835.*

(3)—between adoptive mother and son, enforceability of—*See ADOPTION, No. 1, 11 C.W.N. 147.*

See, also, I, Transfer of Pro. Act, No. 79.

„ Jurisdiction (of High Court), No. 5.

„ Civil Pro. Code, No. 141.

Agricultural lease.

S. 108, cl. (c) of the Transfer of Property Act has no application to—as laid down in S. 117 of the Act—*See MIXING RIGHTS, No. 1, 3 C.L.J. 59.*

Agricultural Tenant.

See I, Act XII of 1891 (N.W.P.), No. 6.

Agriculturist.

See I, Civil Pro. Code, No. 164.

„ Act XIII of 1900 (Punjab Alienation of Land), No. 3.

Alienation.

(1) Condition against—Validity of—*See TRANSFER OF PROPERTY ACT (IV of 1902), No. 11, 3 A.L.J. 631.*

(2)—by father—Necessity for sale established—Consideration for sale higher than the amount necessary to raise—Objection by sons, validity of—*See CIV. PRO. CODE, No. 241, 144 P.L.R. 1906.*

(3)—by children, male proprietor (in the Punjab) by way of gift under his will in favour of one of his collaterals to the exclusion of others—*See CUSTOM PECULIAR TO PUNJAB, No. 20, 96 P. R. 1905.*

See, I, Custom (Punjab), Nos. 8, 21, 24, 25, 36, 37.

„ Hindu Law (Reversioners), No. 19.

„ Gift, No. 1.

Alienation of Land (Bengal).

See ACT XIII of 1900 (Punjab).

Alluvion.

- (1) *Bengal Regulation No. XI of 1825, S. 4—Alluvion—Gradual accretion—Change of course of a river within a short space of time.*

Certain land, belonging to village P on the river Gomati, was submerged, and, after remaining submerged for a not very lengthened period, again re-appeared. But, on its re-appearance, it was found to be on the opposite side of the river and adjoining village T; held, that the land thus cut off from village P could not be said to have become part of village T by "gradual accretion" within the meaning of S. 4 of Bengal Regulation No. XI of 1825, but was rather land merely separated from the village of which it formed part by a sudden change in the course of the river, and this being so, no change of ownership had occurred.

"Gradual accretion" or "alluvion" means an imperceptible increase; and land is said to be acquired by alluvion when it is acquired so gradually that it cannot be said how much is added at any particular moment of time (a). *Rai Krishna Chandra v. Saidan Bibi, A.W.N. (1905), 271 = 2 A.L.J. 821 = 28 A. 256.*

STANLEY, C.J. and BURKITT, J.

References.—(a) 13 M.L.A. 467; 2 I.A. 28, *Refd. to.*

(2) *Diluvion—Gradual accretion explained:* Alluvion is an imperceptible increase; land is said to be acquired by alluvion when it is acquired so gradually, that one cannot say how much is added at any particular moment of time. But, if by the violence of a river, a portion of land is added to the estate of an adjoining owner, the land continues to be the property of the original owner. *Narendra Bahadur Singh v. Ashhaihar Shukul, 3 A.L.J. 453 = 28 A. 617.*

STANLEY, C.J. and KNOX, J.

References.—13 M.L.A. 467, 2 A.L.J. 821 and 27 A. 655, *R.*

(3) *Accretions by—*from the sea or a river, to whom belong—*See ACCRETIONS, No. 2, 1 M.L.T. 101.*

See, also, I, 126.

See, also, I, Regulation XI of 1825 (Bengal) No. 1;

„ Accretion, No. 1.

Alluvion and diluvion.

- (1) *Practice—Claims for land subject to river action—Decree in respect of land under water.*

The plaintiffs claimed possession of 18 *Kanals*, 10 *marlas* of land subject to river action. It was found that nearly half of the land was under water and the Divisional Judge was of opinion that decree should be given only for the land which was above water.

Held, that, since plaintiffs' title to the whole land was established, they were entitled to a decree for the whole. **Khan Mulk v. Pir Bakhsh**, 152 P.L.R. 1906.

JOHNSTONE, J.

Alteration.

- (1) *Suit for recovery of money due on a bond—Forged bond—Material alteration, if, and when, vitiates instrument—Party, addition of, fraudulent—original debt, effect of, when recited in bond—Court, power of, to dismiss suit against a party not contesting—Material alteration, law as to—imitation, if saved by acknowledgment of original debt recited in forged bond.*

The test for determining the materiality of an alteration in an instrument is to see whether the addition gave a different legal character to the writing and whether it would completely change the nature of the relation towards each other of the parties to it and their remedies upon it.

If a party to a deed makes an alteration in a covenant after the deed is executed, not only the covenant but the whole deed becomes void.

Any change in an instrument, which causes it to speak a different language in legal effect from that which it originally spoke, which changes the legal identity or character of the instrument, either in its terms or the relation of the parties to it, is a material change, or technically an alteration, and such a change will invalidate the instrument against all parties not consenting to the change.

The question, to what extent the identity of an instrument must be changed in order that its legal effect will be altered, so as to bring the case within the terms of a material alteration vitiating the instrument, must depend upon the nature of the alteration in each particular case. The test is not, necessarily, whether the pecuniary liability of one of the parties has been increased by the change; it is of no conse-

Alteration.—(Concluded).

quence, whether the alteration would be beneficial or detrimental to the party sought to be charged on the contract. The important question is, whether the integrity and identity of the contract have been changed (a).

Where a party, by his own act alters a genuine instrument, so that it cannot be the foundation of any legal remedy, he ought not to be permitted to prove the promise contained in it by any other evidence, on the principle that the debt is merged in the instrument and hence the destruction of the latter leaves nothing upon which to sue (b).

In the absence of fraud, the instrument only; and not the original debt is, in such circumstances, destroyed, but where a party has voluntarily and fraudulently altered a deed and has thus destroyed the evidence of his debt, he should not be allowed to fall back upon the original consideration and establish it by evidence which he himself has destroyed (c).

As an ordinary rule, where the defendant has notice of an alteration in an instrument, which is the foundation of the action, he should raise the issue by his pleading, whether the alteration is material and the instrument has become void. If, however, in proving the execution of a note, the testimony discovers the fact that it was designedly changed by the payee, the Court is not precluded from giving effect to the well-settled rule of law that an instrument is avoided by a material alteration. **Gour Chandra Das v. Prasanna Kumar Chanda**, 3 C.L.J. 963 = 10 C.W.N. 788 = 93 C. 812.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 7 C. 616 and 2 P.L.R. 107, F. 18 M. & W. 343, 5 E. & B. 83, 1 Sm. L. C. 767 (11th Ed.), 167 Mass. 426, 57 Am. St. Rep. 466, 6 Wallis. 80, 42 Ill. 375, and 50 Mo. 157, R. 2 M. & Gr. 890, 29 L.J. Ex. 115, 1 Ch. 451, D. (b) 3 B. & Ad. 660 and 1 Sm. L.C.² 801 (11th Ed.), R. (c) 24 Am. St. Rep. 250, 12 Am. St. Rep. 754, 4 L.R.A. 196, 16 L.R.A. 468, 47 Am. St. Rep. 929, R. 5 C.W.N. 56; 25 B. 616, 23 M. 187, 25 A. 580, D.

(2) The—of a document, to be material, must affect the legal effect of the contract so as to make it cease to be the same instrument—See REGISTRATION ACT (III of 1877), No. 11, 7 Bom. L.R. 742.

See, also, I, 127.

„ „ Registration Act (III of 1877), No. 10.

Alternative claims.

- (1) *Proprietary right—Prescriptive right—Inconsistent claim.*

A claim to relief on the ground of proprietary right is not necessarily inconsistent with a claim to relief on the ground of prescriptive right, and may be claimed in the alternative with the latter.

When a plaintiff has been allowed to sue for relief based, in the alternative, on the ground of proprietary right and right by prescription and no objection has been taken to the frame of the suit in the Court of first instance, objection cannot be allowed to be taken at the appellate stage. (a) *Durgamani Debbya v. Ambica Charan Sarma*, 4 C.L.J. 367. *MACLEAN, C.J., and GEIDT, J.*

Reference:—(a) 16 W. R. 198, *D.*

- (2) *Inconsistent claims—Ownership—Easement.*

A suit is not liable to be dismissed because the plaintiff claims in the alternative, over the same plot of ground, rights of ownership and easement. *Narendra Nath Baruri v. Abhaya Charan Chattopadhyaya*, 4 C. L. J. 487 = 11 C. W. N. 20 = 1 M. L. T. 964 (F.B.)

MACLEAN, C. J., GHOSE, GEIDT, MOOKERJEE and HOLMWOOD, JJ.

*Reference:—*4 C. L. J. 367, *Appr.*

Amendment.

- (1) *Subsequent—of original decree—Decree from original decree—Effect of amendment, as regards limitation—See LIMITATION ACT, No. 7, 3 C.L.J. 188.*

(2)—*of a plaint for declaration into one for possession—Change of suit into one of inconsistent character—See PLEADINGS, No. 2, 2 N.L. R. 79.*

(3)—*of plaint—Suit by wrong person as plaintiff—See CIV. PRO. CODE, No. 96, 10 C.W. N. 662.*

(4) *Improper—of plaint—See CIV. PRO. CODE, No. 62, 3 C.L.J. 806.*

(5)—*of plaint—Misdescription of plot—See PLAINT, No. 1, A.W.N. (1906), 220.*

(6)—*of plaint—case in which amendment was disallowed in a second appeal—See CIV. PRO. CODE, No. 237, 9 O.C. 275.*

(7)—*of plaint—Suit instituted by one person with the consent of the Advocate-General—Sub-*

Amendment.—(Continued).

stitution of another plaintiff with the consent of the Advocate-General—See CIV. PRO. CODE, No. 281, 8 Bom. L.R. 751.

See, also, I, CIVIL PRO. CODE, Nos. 46, 67 & 98.

„ „ „ *Contract Act, No. 8.*

„ „ „ *Plaint, No. 17.*

Annuity.

Whether an—*is a right to future maintenance for purpose of S. 266, C. P. Code—See CIV. PRO. CODE, No. 146, 10 C.W.N. 1109.*

See, also, I, 128.

Appeal.

1. GENERAL.
2. LETTERS PATENT.
3. PARTIES.
4. TO PRIVY COUNCIL.
5. REVENUE APPEAL.
6. SECOND APPEAL.
7. FURTHER APPEAL.

—1.—(General).

- (1) *Death of guardian ad litem pending appeal—Appointment of fresh guardian—irregularity cured.*

While an appeal on behalf of two minor appellants was pending in the High Court, their guardian *ad litem* and also one of the appellants themselves died. The appeal was decreed without these matters having been brought to the notice of the Court. *Held*, that this was no more than an irregularity, which was cured by the subsequent appointment of a guardian *ad litem* pending an appeal under S. 10 of the Letters Patent. *Ram Dayal v. Ajad-hia Prasad*, A. W. N. (1906), 40 = 3 A. L. J. 81 = 28 A. 828.

STANLEY, C. J. and BURKITT, J.

- (2) *Pre-emption decree—Vendee drawing pre-emption money out of Court before decision of appeal.*

After filing further appeal against a decree for possession of property, passed in a pre-emption suit in favour of the pre-emptor, the vendee, defendant, applied for stay of execution. The application was granted on the condition of his furnishing security for payment of interest, till the decision of the appeal, on the amount of the purchase-money deposited by the pre-emptor in Court. Before the decision of the appeal, the vendee drew the amount out of the Court,

Appeal.—(Continued).**1.—(General).—(Continued).**

Held, that, by so doing, the vendee lost his right of appeal (a). **Mian Feroz-ud-din v. Sheikh Ghulam Rana**, 76 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

References.—(a) 82 P.R. 1888, 49 P.R. 1882 and 188 P.R. 1888, R.

- (3) *Order of District Judge refusing to execute an award under the Land Acquisition Act, appealability of, as a decree—Chief Court, the sole Court for such appeal.*

An order of a District Judge refusing to execute an award under Act I of 1894 (Land Acquisition) is one made under S. 244, Civ. Pro. Code, and, in consequence, appealable as a decree. The Chief Court being the sole Court for appeal under S. 54 of the said Act, the above order is appealable only to the Chief Court and to no other Court, the value of the claim involved being immaterial. **Zamindars of Dhar v. Rana**, 53 P.R. 1906=108 P.L.R. 1906.

CHATTERJI and KENSINGTON, JJ.

- (4) *Compromise-decree containing directions as to costs, appeal against, maintainability of—*

The compromise entered into between the parties in this case failed to make provision for the payment of costs and the Court of first instance supplied the omission *suo motu*, directing each side to bear its own costs. On appeal by plaintiff against the order in respect of the costs, *held*, under S. 375, Civ. Pro. Code, the decree was final in respect of all the subject matter of the suit other than costs, and upon the principle recognised in **Balkisson Dass v. Luchmeput Sing** (a) there could be no appeal against the direction as to costs. **Sidha Gopal Brahmia v. Peran**, 2 N.L.R. 49.

DRAKE-BROCKMAN, A.J.C.

Reference.—(a) 1 C. 91, R.

- (5) *Act No. XII of 1887 (Civil Courts Act). S. 17—Jurisdiction—"Proceeding in relation to" a case—Transfer of a district from one jurisdiction to another.*

Where a certain area is transferred by a Government notification from the jurisdiction of one District Judge into the jurisdiction of a different District Judge, an appeal preferred, after the date on which the notification takes effect, must be received and entertained by the District Judge, into whose jurisdiction the area

Appeal.—(Continued).**1.—(General).—(Continued).**

from which the appeal comes has been transferred. **Alla Dal Begam v. Keeri Mal**, A.W. N. (1905), 199=2 A.L.J. 576=28 A. 98.

BANERJI and RICHARDS, JJ.

- (6) *Per Curiam*—The Court of an Additional District Judge is a Court under the District Judge's administrative control and the District Judge is competent to make over to the Additional District Judge an appeal which he had withdrawn from a Subordinate Judge to whose file it had at first been transferred (a). **Rakha Chandra Tewary v. The Secretary of State, for India in Council**, 10 C.W.N. 841.

RANPINI and WOODROFFE, JJ.

References.—(a) C.W.N. 705=82 C. 875, commented on.

- (7)—from an order merely dismissing a suit under S. 113, C.P.C., to be regarded as one under S. 588, C.P.C.—See *Civ. Pro. Code*, No. 87, 16 M.L.J. 80.

- (8)—lies against order dismissing without enquiry an application under S. 282—See *Civ. Pro. Code*, No. 108, 16 M.L.J. 27.

- (9)—The Judicial Committee does not ordinarily entertain an—*from concurrent judgments on a mere question of fact*—See *PRACTICE (Privy Council)*, No. 1, 10 C.W.N. 225.

- (10) No—lies from an interlocutory order of a Land Acquisition Judge—See *ACT I OF 1894 (LAND ACQUISITION)*, No. 15, 10 C.W.N. 195.

- (11) An application for leave to appeal to Privy Council is not an—See *LIMITATION ACT*, No. 11, 8 A.L.J. 165.

- (12) No—lies from an order setting aside an award on objections raised under S. 521, C.P. Code—See *Civ. Pro. Code*, No. 256, 8 A.L.J. 168.

- (13) No—lies against a decree on an award passed after over-ruling the objection of a party on the ground of misconduct of the arbitrator—See *Civ. Pro. Code*, No. 238, 8 A.L.J. 185.

- (14)—against order under S. 108, C.P. Code, refusing to set aside an *ex parte* decree or order—See *Civ. Pro. Code*, No. 80, 8 A.L.J. 119.

- (15)—to the High Court treated as an application for revision—See *Civ. Pro. Code*, No. 80, 8 A. L. J. 119.

- (16)—Against order of remand—See *Civ. Pro. Code*, No. 80, 8 A.L.J. 119.

- (17) Original valuation of suit over Rs. 5,000—Subsequent withdrawal of part of claim, effect

Appeal.—(Continued).**——1.—(General).—(Continued).**

of, on right of—to the High Court—See ACT XII of 1887 (BENGAL), No. 3, 3 A. L. J. 136.

(18) No—lies to the Collector from a decision by an Assistant Collector on a question of title raised in an application for partition under the N. W. P. Land Revenue Act—See ACT XIX of 1873 (N. W. P.), No. 2, 3 A. L. J. 43.

(19) No—lies from an order remanding for retrial a rent suit under the N. W. P. Tenancy Act—See ACT II of 1901 (NORTH-WEST PROVINCES TENANCY), No. 26, 3 A. L. J. 20.

(20)—argued by a pleader holding brief for another—Right of party to re-argue—See PRACTICE (MISCELLANEOUS CASES), No. 1, 9 O. C. 65.

(21) Right to contest validity of remand order in—from final decree—See CIV. PRO. CODE, No. 296, 9 O. C. 80.

(22) No—against order admitting application for review except on ground of limitation—See CIV. PRO. CODE, No. 83, 9 O. C. 35.

(23) Partition suit—Basis for valuation for jurisdiction purposes—See ACT XII of 1887 (BENGAL), No. 4, 3 C. L. J. 197.

(24) An—lies from an order rejecting an application to set aside an *ex parte* decree as not maintainable—See CIV. PRO. CODE, No. 3, 3 C. L. J. 276.

(25)—against an order—power of appellate Court to stay proceedings in pursuance of the order—See ACT VIII of 1890 (GUARDIANS AND WARD), No. 2, 3 C. L. J. 29.

(26) Original decree since amended—Appeal against original decree—Limitation, when commences to run for appeal—See CIV. PRO. CODE, No. 93, 3 C. L. J. 188.

(27) Cross-objections by respondent—Appeal cannot be withdrawn after commencement of hearing—See CIVIL PRO. CODE, No. 291, 24 P. L. R. 1906.

(28) No—lies to the High Court from the order in appeal on an application by owner objecting to sale in execution of property comprised in a decree under S. 88 of the Transfer of Property Act—See CIV. PRO. CODE, No. 121, A. W. N. (1906), 62.

(29) An appeal will not be precluded by S. 12 of the Court-Fees Act from a Court's decision as to the valuation of a suit for pre-emption based upon a wrong conception of S. 7, cl. V of the Act—See COURT-FEES ACT, No. 4, A. W. N. (1906), 66a.

Appeal.—(Continued).**——1.—(General).—(Continued).**

(30) Award modified under S. 518, C. P. C.—Power of appellate Court to enter into question of corruption or misconduct of arbitrator—See CIV. PRO. CODE, No. 254, 13 P. R. 1906.

(31) From an order directing an award on a private arbitration to be tried—Court fee chargeable on memorandum of appeal—See COURT-FEES ACT, No. 2, 33 C. 11.

(32) Extension of time to file—See LIMITATION ACT, No. 6, 3 C. L. J. 545.

(33)—against order under S. 588 (17) to which Court lies, when the order is passed by a Court inferior to a District Court—See CIV. PRO. CODE, No. 318, 2 N. L. R. 54.

(34) Disallowance of objection by judgment-debtor's legal representative that attached property was trust-property in his possession—No—against such order—See CIV. PRO. CODE, No. 120, A. W. N. (1906), 157 = 3 A. L. J. 370.

(35) Right of—Decree by first Court declaring right of pre-emption—See PRE-EMPTION, No. 24, A. W. N. (1906), 160.

(36) Suit for pre-emption—Appeal by purchaser for enhancement of purchase-money—Appellate Court not bound to extend time allowed for payment of price when confirming decree of lower Court—See PRE-EMPTION, No. 27, 48 P. R. 1906.

(37) Under-valuation of—not prejudicially affecting disposal—applicability of S. 11 of Act VII of 1887 (Suits Valuation)—See JURISDICTION (GENERAL), No. 2, 71 P. L. R. 1906.

(38)—under S. 522, CIV. PRO. CODE against a decree made in accordance with award dependent on validity or otherwise of the award—See CIV. PRO. CODE, No. 259, 33 C. 408.

(39) Power of appellate Court to add persons, not respondents when appeal was presented, as parties respondents to the appeal—See LIMITATION ACT, No. 35, 33 C. 329.

(40) An—lies from an order under S. 526, CIV. PRO. CODE, merely directing the filing of an award made on a private arbitration—See CIV. PRO. CODE, No. 264, 10 C. W. N. 609.

(41) No—lies from an order directing an award to be filed under S. 526, CIV. PRO. CODE, except in certain cases—See CIV. PRO. CODE, No. 264, 10 C. W. N. 609.

(42) An order directing as well as one refusing the filing of an award stand on the same

Appeal.—(Continued).**—1.—(General).—(Continued).**

footing as regards appealability—See CIV. PRO. CODE, No. 264, 10 C.W.N. 309.

(43) An—lies, where the proceedings are under Ss. 523 and 525, Civ. Pro. Code, as to the fact of reference and the award being covered by the reference—See CIV. PRO. CODE, No. 261, 85 P.L.R. 1906.

(44) Memorandum of—, Court-fee payable on, in a suit for redemption of a mortgage when the appeal contests the finding of the Court below as to the amount payable—See COURT-FEES ACT (VII OF 1870), No. 8, 9 O.C. 153.

(45)—against decree in suit under S. 380, Civ. Pro. Code—Stamp-duty payable—See COURT-FEES ACT, No. 1, 29 M. 172.

(46)—lies against an award under the Land Acquisition Act directing investment of the compensation money in Government securities—See ACT I OF 1894 (LAND ACQUISITION), No. 28, 29 M. 117.

(47) An—lies from an order under S. 367. C. P. C. for abatement of suit—See CIV. PRO. CODE, No. 214, 2 N.L.R. 7.

(48) Objection as to non-joinder of parties cannot be raised for the first time in—See CIV. PRO. CODE, No. 43, 2 N.L.R. 45.

(49)—against decree on invalid award, maintainability of—See CIV. PRO. CODE, No. 253, 2 N.L.R. 81.

(50) Application for leave to file—in *forma pauperis* dismissed—subsequent—in regular form on stamp, effect of, as regards limitation—See LIMITATION ACT, No. 8, 78 P.R. 1906.

(51) No— from orders of Assistant Collector to execute decree—See ACT II OF 1901 (N.W.P. TENANCY), No. 19, 3 A.L.J. 560.

(52) Question of proprietary title—Sir-holder and his sub-tenant—See ACT II OF 1901 (N.W.P. TENANCY), No. 20, 3 A.L.J. 608.

(53) Objections to partition in Revenue Court, summary dismissal of—right of—against the order—See ACT III OF 1901 (N.W.P. LAND REVENUE), No. 18, 3 A.L.J. 617.

(54) Power of appellate Court to enlarge the time for redemption—See TRANSFER OF PROPERTY ACT, No. 97, A.W.N. (1906), 208.

(55) Agreement of parties to a suit to refer matters in dispute to decision of Court—Decision of Court, if open to—See CIV. PRO. CODE, No. 201, 10 C.W.N. 880.

Appeal.—(Continued).**—1.—(General).—(Continued).**

(56) Whether an—lies in a suit to enforce an outstanding agreement when the estate is taken over by Government under Act VI of 1876 (Bengal)—See ACT VI OF 1876 (BENGAL), No. 2, 4 C.L.J. 238.

(57)—lies against order to file or refusing an application to file, an award—See CIV. PRO. CODE, No. 272, 29 M. 303.

(58)—against decree in accordance with award—Legality or validity of award—See CIV. PRO. CODE, No. 260, 33 C. 899.

(59)—in a suit for redemption, by a mortgagor or mortgagee—value of subject-matter—Court Fees Act, S. 7, cl. 9, and Sch. 1, Art. 1—See COURT FEES ACT, No. 9, 16 M.L.J. 287=29 M. 367.

(60)—withdrawal of, in cases of, when limitation begins to run for execution of original decree—See EXECUTION OF DECREE, No. 11, 1 M.L.T. 233.

(61)—from order of District Judge in proceedings under Act XXXV of 1858 (Lunatics), to what Court lies when property exceeds Rs. 5,000 in value—See ACT XXXV OF 1858 (LUNATICS), No. 2, 94 P.R. 1906.

(62) An appellate Court not competent to dismiss an—for default, when the case is not returned completed by the Court to which the—was remanded for further enquiry—See CIV. PRO. CODE, No. 298, 90 P.L.R. 1906.

(63)—from order refusing application to file an award—See CIV. PRO. CODE, No. 263, 9 O.C. 205.

(64) under S. 39 (a) of the Punjab Courts Act, from unclassified suits of over Rs. 100 in value, lies to Divisional Court not to District Judge—See SMALL CAUSE COURTS (PROVINCIAL, ACT IX OF 1887), No. 10, 194 P.R. 1906.

(65) —in *forma pauperis*, dismissal of petition for permission to institute an, effect of—See CIV. PRO. CODE, No. 236, 3 L.B.R. 194.

(66) Entire abatement of, on failure to add, in time, representatives of one of the defendants—Respondents—See CIV. PRO. CODE, No. 216, 3 L.B.R. 168.

(67) Plurality of appeals—first and second appeals—See HIGH COURT, No. 1, 16 M.L.J. 412.

(68)—and not application for revision, the proper remedy on refusal to bring legal re-

Appeal.—(Continued).**——1.—(General).—(Concluded).**

representative on record. See CIV. PRO. CODE, No. 213, 9 O. C. 354.

(69)—no, lies from decree passed on a compromise—See CIV. PRO. CODE, No. 219, 9 O. C. 355.

(70) Dismissal of, under S. 551 Civ. Pro. Code, effect of, as to decree appealed against—See CIV. PRO. CODE, No. 290, 4 C.L.J. 566.

(71) Delay in appealing against execution-proceedings—Discretion of Court—interference in appeal—See LIMITATION ACT, No. 9, 8 Bom. L.R. 858.

(72) No third—lies to the High Court from the decree in second appeal of a District Judge in a rent suit—See ACT II OF 1901 (N.W.P. Tenancy), No. 25, 3 A.L.J. 688.

(73) —whether an, lies against an order of abatement of suit—See CIV. PRO. CODE (TRAVANCORE), No. 7, 21 T.L.R. 191.

(74) Order refusing to enlarge time for preferring appeal, appealability of—Application for extending time for appealing, when to be made. See LETTERS PATENT (CALCUTTA), No. 2, 88 C. 1323.

(75) Dismissal of, rightly, though on wrong grounds—High Court's power of revision—See CIV. PRO. CODE, No. 8-a, 16 M.L.J. 526.

See, also, I, Civil Pro. Code, Nos. 5, 6, 14, 76, 99, 104, 145, 150, 179, 200, 213, 225, 232, 244, 251, 258, 263, 264, 267, 271, 280, 282, 285, 286, 289, 296, 297, 299, 310, 330 and 331.

See, also, I, Act V of 1881 (Probate), No. 4; Act VI of 1882 (Companies), No. 2; Act VII of 1887 (Suits Valuation), No. 2; Act VII of 1889, No. 6; Act VIII of 1885 (Bengal Tenancy), No. 39; Act I of 1895 (Bengal), No. 2; Act II of 1901 (N. W. P. Tenancy), Nos. 7, 8, 13 and 16; Act XII of 1881 (N. W. P. Rent), No. 2; Act I of 1869 (Oudh Estates), No. 1; Act XVI of 1887 (Punjab Tenancy), No. 10; Act of State, No. 1; Attaching creditor, No. 1.

——2.—(Letters Patent).

See, I, Civ. Pro. Code, No. 235 and Letters Patent (Calcutta), No. 1.

See, also, I, Guardians and Wards Act (VIII of 1890), No. 7; Landlord and Tenant, Nos. 28, 51; Letters Patent (Bombay), No. 3; Letters Patent (N.W.P.), No. 1; and Limitation Act, Nos. 2, 128 and 131.

Appeal.—(Continued).**——3.—(Parties).****(1) Defect of parties.**

When during the pendency of an appeal against a decree for rent one of the plaintiffs, respondents, died and his heirs were not brought on the record:

Hold—that the appeal ought to be dismissed (a) *Tarif Dafadar v. Khotajannassa Bihl*, 10 C. W. N. 981.

RAMPINI and GELDT, JJ.

Reference.—(a) 6 C. W. N. 196, F.

——4.—(to Privy Council).**(1) Stay of proceedings in execution—Courts in India, powers of.**

In appeals pending before the Privy Council, applications for stay of proceedings in execution ought always to be made, in the first instance at any rate, to the Court in India, which has ample power to deal with the matter according to the circumstances of the particular case. *Yasudeva Modellar v. Shadagepa Modellar*. 4 C.L.J. 101 (P.C.)=8 Bom. L.R. 497=10 C.W.N. 945=16 M.L.J. 299=1 M.L.T. 204=29 M. 379.

THE EARL OF HALSBURY, LORD MACNAGHTEN, SIR ARTHUR WILSON and SIR ALFRED WILLIS.

(2) Suit for damages for more than Rs. 10,000 dismissed on appeal—amount of damages not assessed by first Court—Special leave to appeal—Value of subject-matter in dispute—See PRACTICE (OF PRIVY COUNCIL), No. 8, 33 C. 993.

(3) No—lies to His Majesty in Council from the Courts in Kathiawar or from the decision of the Governor of Bombay in Council on appeal—See SOVEREIGN POWERS, No. 1, 10 C.W.N. 361.

(4) Valuation of—Suit for partition—whether value of the whole estate or of share claimed is test of valuation for purposes of—See CIVIL PRO. CODE, No. 325, 3 C.L.J. 257.

(5) Application for leave to appeal to Privy Council, necessity for High Courts stating grounds for rejecting—See CIV. PRO. CODE, No. 326, 10 C.W.N. 545 (P.C.)

(6) Valuation of appeal for purposes of—See CIV. PRO. CODE, No. 325, 10 C.W.N. 564.

(7) Valuation of appeal—Right to include claim for mesne profits in ascertaining value of appeal—S. 596, Civ. Pro. Code.

In an action for ejectment, on the termination of certain leases, the property was valued

Appeal.—(Continued).**—4.—(to Privy Council).—(Concluded).**

at Rs. 5,460, but in addition, the plaintiff claimed *mens* profits. He obtained a decree for possession and *mens* profits in the Court of first instance, and in execution-proceedings he put in a claim for *mens* profits for over Rs. 30,000. Nothing, however, was done as regards this claim, as there was an appeal, and the execution-proceedings were stayed pending the appeal, which was ultimately successful. On plaintiff's application for a certificate that the case is a fit one for appeal to Privy Council, *held*, that the plaintiff is entitled to take into account the claim for *mens* profits, with a view to ascertaining whether the value of the matter in dispute reaches the statutory amount of Rs. 10,000, (a) and that the certificate must be granted, as the decree involved, directly or indirectly, some claim or question to, or respecting, property of the value of Rs. 10,000 or upwards, within the meaning of S. 596, Civ. Pro. Code. *Dalgleish v. Damodar Narain Chowdhry*, 83 C. 1286.

MACLEAN, C.J. & HOLMWOOD, J.

Reference:—(a) A.C. 193 (P. C.) (1893), *R.*

See, also, I, *Civil Pro. Code*, Nos. 313, 314.

" " *Letters Patent (Calcutta)*, No. 8.

—5.—(Revenue Appeal).

C. P. C., Ss. 588 (28), 589, inapplicability of, to appeals from judicial orders passed by a Collector as a Revenue Court under the Punjab Tenancy Act—*See Act XVI of 1887 (PUNJAB TENANCY)*, No. 14, 1 P. R. 1905 (Rev.).

—6.—(Second Appeal).

(1) *Execution—Appeal from orders—Second appeal—Chota Nagpur Landlord and Tenant—Procedure Act (I of 1879, B.C.), S. 144—Act V of 1903, (B. C.), S. 41.*

Under Act I (B.C.) of 1879, as amended by Act V. (B.C.) of 1903, no second Appeal lies from an order passed in execution. *Raja Issur Lal Singh v. Patree Bahu Singh*, 10 C.W.N. 284=38 C. 378.

MACLEAN, C.J. and GRIDT, J.

(2) A misreading or misconception of evidence is not a ground for interference in second appeal. The remedy in such a case is by an application for review of judgment (a).

If, however, there is no evidence in support of the finding of the Subordinate Court, the Court of second appeal would be entitled to

Appeal.—(Continued).**—8.—(Second Appeal).—(Continued).**

interfere (b). *Ananda Chandra Sen v. Parbati Nath Sen*, 4 C.L.J. 198.

RAMPINI and MOOKERJEE, JJ.

References:—(a) 19 W.R. 292 and 1 C.L.J. 232 (235), *R. and F.*, 17 I.A. 121=18 C. 23, 14 I.A. 101=14 C. 940, 16 I.A. 238=17 C. 291, 19 I.A. 1=19 C. 249, 21 I.A. 39=21 C. 504, *B.*, 20 B. 753, 20 C. 207 and 38 C. 200, *D.* (b) 17 I.A. 65=17 C. 875, *F.*

(3) The question of the amount of damages in an action for slander is a question of fact and it is open to the High Court to interfere in second appeal upon such question—*See SLANDER*, No. 1, 8 C.L.J. 140.

(4) Leaving important evidence out of account whether amounts to question of law for a second appeal—*See Act VIII of 1885 (BENGAL TENANCY)*, No. 16, 38 C. 200.

(5) Rejection of an application for admission of an—presented to a single judge of the High Court is within his jurisdiction—*See Civ. Pro. Code*, No. 64, A.W.N. (1900), 63.

(6) Court acting on illegal evidence, as to existence or non-existence of a custom—Point of law—*See Civ. Pro. Code*, No. 309, 3 A.L.J. 467.

(7) Omission to decide a material issue, whether a ground for a second appeal—*See Civ. Pro. Code*, No. 311, 4 C.L.J. 86.

(8) A decision of the Special Judge, on appeal from the decision of a Settlement Officer on an application by the landlord under S. 105 (1) holding that no case was made out for enhancement of rent is not subject to second appeal—*See Act VIII of 1885 (BENGAL TENANCY)*, No. 49, 4 C.L.J. 188.

(9) Landlord's application for assessment of fair and equitable rent—*Act VIII of 1885 (BENGAL TENANCY)*, Ss. 103 A, 105, and 109 A—*See Act VIII of 1885 (BENGAL TENANCY)*, No. 38, 33 C. 882.

(10) Suit for recovery of fees under the *Excise Act*—relief for compensation joined—not entertainable by the Assistant Collector—no appeal lies—*See Act II of 1901 (N.W.P. TENANCY)*, No. 21, 3 A.L.J. 802.

(11) Whether a sale by a guardian was for benefit of minors is a question that can be gone into on—*See MAHOMEDAN LAW (ALIM-NATION)*, No. 3, 4 C.L.J. 485.

Appeal. — (Concluded).**— 6. — (Second Appeal). — (Concluded).**

(12) Limitation for bringing representatives of a deceased person on record—See LIMITATION ACT, 194, 16 M. L. J. 475.

(13) Suit for money paid—Suit for illegal, improper or excessive distress—Act IX of 1887, art. 35 (j)—see SMALL CAUSE COURT (PROVINCIAL), ACT IX OF 1887, No. 11, 16 M. L. J. 353.

(14) Custom and usage, proof of—Second appeal, ground of—Finding of fact.

In a second appeal, the High Court can interfere where there is no evidence to justify the finding of fact arrived at by the Lower Appellate Court. *Peary Mohan Mukherjee v. Jote Kumar Mukerjee*, 11 C. W. N. 83.

RAMPINI & WOODROFFE, JJ.

(15) Appeal to lower appellate Court by respondent in High Court insufficiently stamped—Procedure—See COURT-FEES ACT (VII OF 1870), No. 10, A. W. N. (1905), 280.

See, also, I, 139, and I, Civil Pro. Code, Nos. 65, 68, 258, 281, 304, 306, 308; Act II of 1901 (N. W. P.), No. 2; Act VII of 1887, No. 2, Court, Fees Act (VII of 1870), No. 11, Limitation Act Nos. 70, 77; Lower Burma Courts Act, 1900, No. 1.

— 7. — (Further appeal).

(1)—to High Court from decree of District Judge in second appeal from appellate decree of Collector, maintainability of—See ACT II OF 1901 (N. W. P. TENANCY), No. 24, 3 A. L. J. 625.

(2) Maintainability of—to High Court against decree of District Judge in a second appeal from appellate decree of Collector—See ACT II OF 1901 (N. W. P. TENANCY), No. 23, 3 A. L. J. 623.

Appellate Court.

(1) Power of—to stay proceedings in pursuance of an order appealed against—See ACT VIII OF 1890 (GUARDIANS AND WARD), No. 1, 3 C. L. J. 29.

(2) Power of—to call upon the respondent to furnish security for the due performance of any decree, which may be made on appeal, notwithstanding that the lower Court's decree has been already executed—See CIV. PRO. CODE, No. 285, 3 C. L. J. 67.

(3) Suit for pre-emption—Appeal by purchaser for enhancement of purchase-money—Duty of—to extend time for payment of purchase-

Appellate Court. — (Concluded).

money when confirming decree of first Court—See PRE-EMPTION, No. 37, 48 P. R. 1906.

(4) Decision of, whether can be based on suggestion by a pleader as to a matter of fact—See EVIDENCE, No. 8, 11 C. W. N. 130.

(5) On dismissal of an appeal under S. 551 of the Code, the decree appealed against becomes merged in the decree of—See CIV. PRO. CODE, No. 290, 4 C. L. J. 566.

(6) Decision of, in analogous cases, duty of inferior Court to await decision of—See CIV. PRO. CODE, No. 334, 11 C. W. N. 112.

(7) Power of, to alter effect of decree for redemption, on appeal from order in execution thereof—See CIV. PRO. CODE, No. 144, 3 L. B. R. 129.

See, also, I, Civil Pro. Code, Nos. 281 and 300 (b).

Appointed heir.

Right of sons of—to succeed to adoptive grandfather—See CUSTOMS (PECULIAR TO PUNJAB), No. 58, 124 P. L. R. 1906.

Apportionment.

—of rent—Transfer of lessor's interest by operation of law—See TRANSFER OF PROPERTY ACT (IV OF 1882), No. 1, 33 C. 786.

Arbitration.

(2) Award, jurisdiction of Court to file — depends on value of entire matter submitted—omission to give notice to parties or acceptance of a fee by the arbitrators cannot invalidate the award.

The proper Court for presentation of an application for filing an award is to be determined by its pecuniary jurisdiction with respect to the entire matter to which the arbitration related and not to the amount allowed under the award(a).

An award does not become invalid by the mere omission to give notice of the arbitrators' meeting to a party, who had previously informed the arbitrators of his cancellation of his *muchilika* for, and his withdrawal from, submission to arbitration, nor is an award rendered illegal by reason of the acceptance, by the arbitrators, of the offer of a fee for their services, such acceptance not involving any misconduct on their part. *Subraya Prabhu v. Manjunath Bhakta*, 29 M. 44.

SURABHMANIA AIYAR, OFFG. C. J. and SANKARAN NAIK, J.

Arbitration.—(Continued).

References.—(a) 31 C. 33, *Refd. to.*

(2) *Submission to—Revocation of—Good cause—Collusion of arbitrator.*

A submission to arbitration can be revoked for good cause and not arbitrarily (a). Where the arbitrator is in fraudulent collusion with the defendant, the submission can be revoked. **Bansi Dhar v. Sital Prasad**, 8 A.L.J. 618 = A.W.N. (1906), 258.

BANERJI and RICHARDS, JJ.

Reference.—(a) 12 M.I.A. 112, *F.*

(3) Private—order directing award to be filed, appeal from—See CIV. PRO. CODE, No. 264, 10 C. W. N. 609.

(4) Reference to—of three arbitrators—Award signed by two arbitrators and omitted to be signed by the third and dissentient arbitrator—Signature obtained after delivery of award in Court—Legality of award—See CIV. PRO. CODE, No. 259, 33 C. 498.

(5) Application to file award of—Objections to filing of award—See CIV. PRO. CODE, No. 261, 38 P. L. R. 1906.

(6) Application under S. 525, CIV. PRO. CODE—Reference to—disputed—Jurisdiction of Court to determine whether parties had or had not referred matter to arbitration—See CIV. PRO. CODE, No. 268, A. W. N. (1906), 136.

(7) Application by parties to Court of first instance after reference by appellate Court—See CIV. PRO. CODE, No. 299, A. W. N. (1906), 221.

(8) Refusal of Court to file award of—Revision by High Court—See CIV. PRO. CODE, No. 273, 8 Bom. L. R. 570.

(9) Agreement of parties to suit to refer matters in dispute to decision of Court—Appeal against decision of Court—See COURT, No. 1, 10 C. W. N. 835.

(10) Effect of award of—not filed in Court—See LIMITATION ACT, No. 70, 4 C. L. J. 162.

(11) Appeal against decree in accordance with award—Legality or validity of award—See CIV. PRO. CODE, No. 260, 33 C. 699.

(12) Decree in accordance with—Appeal—Legality or validity of—See CIV. PRO. CODE, No. 260, 33 C. 699.

(13)—determining matters not referred cannot be filed—See CIV. PRO. CODE, No. 272, 29 M. 308.

Arbitration.—(Concluded).

(14)—of arbitrators when requires registration—See REGISTRATION ACT (III OF 1877), No. 18, 71 P. R. 1906.

(15) Order refusing application to file an—, appeal from—See CIV. PRO. CODE, No. 263, 9 O. C. 205.

(16) Application to file award—denial of reference to arbitration—Jurisdiction of Court to enquire into the genuineness of the award—See CIV. PRO. CODE, No. 271, 16 M.L.J. 474.

(17) Reference to private—by parties pending a suit—Application to file the award—Such application is foreign to the suit—Court, powers of—See CIVIL PRO. CODE, No. 266, 8 Bom. L.R. 777.

(18)—Authority of guardian to agree to arbitration on behalf of a minor—See CIVIL PROCEDURE CODE, No. 244, A. W. N. (1905), 171.

(19)—Private—Award, decree in accordance with—Appeal, whether lies against such decree—See CIVIL PROCEDURE CODE, No. 262, 2 C.L.J. 153.

See, also, I, 142 & 143 and I, Civil Pro. Code, Nos. 236, 249, 259, 260, 262, 264, 265, 267, 273 273 and 289.

Arbitration Act.

See under ACT IX OF 1899.

Ariat.

See MAHOMEDAN LAW (GIFT), No. 2, A.W.N. (1905), 269.

Articles of Association.

See I, Company, Nos. 1 and 3.

Assessment.

Payment of—by mortgagee—Whether the amount so paid can be added to mortgage-money—See MORTGAGE (REDEMPTION), No. 7, 8 Bom. L.R. 350.

Assets.

Whether an impartible estate is—in the hands of a successor for payment of debts contracted by a previous holder—See HINDU LAW (IMPARTIBLE ESTATES), No. 3, 16 M.L.J. 339.

See, also, I, Civil Pro. Code, No. 106.

Assignment.

(1)—of executory contract, legality and validity of—See TRANSFER OF PROPERTY ACT, No. 3, 10 C.W.N. 755.

Assignment.—(Concluded).

(2)—of bond providing for repayment of entire sum on default in any one instalment—whether the provision is enforceable as such by assignee. See *CHITTY*, No. 1, 21 T. L. R. 52.

(3)—of mortgage right pending suit on mortgage—Insufficient attestation of the mortgage deed—Discovery of this defect after assignment—Suit by assignee for refund of purchase money—Special covenant protecting assignor from liability—See *TRANSFER OF PROPERTY ACT*, No. 1 M. L. T. 413.

(4) Endorsement on pro-note—Intention to effect a transfer. See *PROMISSORY NOTE*, No. 4, 1 M. L. T. 229.

Association.

Illegal—club fund consisting of more than 20 members—Association for gain—Non-registration under Act VI of 1882—See *ACT VI OF 1882 (COMPANIES)*, No. 2, 1 M. L. T. 106.

Attached property.

Suit to establish right to,—Value of suit for purposes of jurisdiction—See *VALUATION OF SUIT*, No. 1, 142 P. R. 1906.

Attaching creditor.

See, I, 144.

Attachment.

(1) *Attachment in execution, necessity of the existence of the decree at the time of—*

At the time when an attachment was made in execution of an *ex-parte* decree, and even when the order for attachment was made, the said decree was not in existence, the same having been set aside prior to the attachment.

Held, neither the attachment nor the order for it could have any force or validity; nor could the fact, that the decree had been transferred for execution to another Court, give the said attachment any additional validity. The attachment was null and void, not having been based on any decree in existence at the time of such attachment. Also, the fact that a renewed decree was subsequently passed in terms of the decree which was set aside, could not render the attachment valid, the renewal not having the effect of restoring original decree. *Chettiah v. Muhammed v. Kunhi Koru*, 29 M. 175.

DAVIES and BENSON, JJ.

(2)—of property of successful pre-emptor after decree for pre-emption and before acquisition of

Attachment.—(Concluded).

property, legality of—See *CIV. PRO. CODE*, No. 147, 8 A. L. J. 188.

(3)—before judgment, effect of, on right to rateable distribution under S. 295, *Civ. Pro. Code*—See *CIV. PRO. CODE*, No. 100, 10 C. W. N. 634.

(4) Necessity of fresh—before issue of a sale proclamation, when a previous application for execution under which an—was made is dismissed for default—See *EXECUTION OF DECREE*, No. 10, 88 C. 666.

(5) A decree for sale on a mortgage is attachable and saleable in execution—See *CIV. PRO. CODE*, No. 151, 3 A. L. J. 585.

(6) Effect on, of execution-proceedings being struck off—See *EXECUTION OF DECREE*, No. 16, 11 C. W. N. 163.

(7)—of decree after sale but before confirmation, effect of, on right of attaching creditor—See *CIV. PRO. CODE*, No. 186, 11 C. W. N. 158.

See, I, *Civil Pro. Code*, Nos. 163 & 169; *Execution of Decree*, No. 35; *Decree, No. 25 and Trust Property*, No. 2.

Attestation.

(1)—of mortgage-deed, question as to the validity of—Applicability of maxim "*omnia prae sumuntur rite et sollemniter esse acta*".—entry in the record of rights by settlement officer, effect of—

One of the issues in this case was, whether the mortgage-deed used upon was genuine and for consideration. The first Court did not go into the question of consideration but held the mortgage to be invalid because the attesting witnesses were not proved to have seen the mortgagor sign the deed. Plaintiff appealed and the lower appellate Court remanded the case directing further evidence to be taken. The first Court complied but again came to the conclusion that valid attestation of the deed had not been established by the plaintiff. *Held*, under the circumstances of the case (*viz.*, the mortgagor, the mortgagee, the scribe and one of the attesting witnesses of the deed in question were all dead and the surviving witness had no clear recollection of the circumstances attending the execution, neither the evidence of that witness nor that of the other persons, examined to show what happened when the document was written and executed, contained anything which tended to establish positively that the attesting

Attestation.—(Concluded).

witness did not see the mortgagor sign, for the purpose of deciding whether the mortgage-deed was duly attested or not, the maxim "*omnia prae sumuntur rite et solenniter esse acta donec probetur in contrarium*" might be applied so as to presume due attestation, the maxim being applicable, in such cases, under all circumstances except where the attestation required by law has been either actually proved or disproved.

As to the other issue in the case, whether the mortgagor had the legal right to mortgage the land, it had to be determined whether he held proprietary or mere tenant rights in the land mortgaged by him. *Held*, the fact that, in the record by the settlement officer, under S. 72 of the Land Revenue Act, a person has been styled as a tenant is no bar to that person establishing, subsequently, that his status was not that of a tenant but that of a proprietor (a). The said record is merely a statement as to the condition of facts as ascertained by the officer in the course of his inquiry and is of no final or conclusive effect whatever on the status or the rights of the person concerned. **Seth Mulchand v. Mt. Janki**, 2 N.L.R. 65.

DRAKE-BROCKMAN, A.J.C.

Reference.—(a) 10 C.P.L.R. 33, F.

(2) Mere attestation of a deed does not necessarily import an assent to all the recitals contained therein. **Imam Ali v. Baij Nath Ram Sahu**, 10 C. W. N. 551 = 3 C. L. J. 576 = 33 C. 618.

MACLEAN, C. J. and MOOKERJEE, J.

(3) Evidence relating to—of mortgage-deed.—Burden of proof—Applicability of maxim "*omnia rite esse acta*"—See TRANSFER OF PROPERTY ACT, No. 42, 2 N. L. R. 10.

(4)—of a sale-deed, when operates as estoppel—See EVIDENCE, No. 1, 2 N. L. R. 34.

(5) What is the meaning of—and how is it to be affected—See TRANSFER OF PROPERTY ACT, No. 44, 4 C. L. J. 41.

See, also, *I, Mahomedan Law (Will)*, No. 2 and Transfer of Prop. Act, Nos. 17, 19 & 20.

Attorney and Client.

Taxation of Costs—See PRACTICE (MISCELLANEOUS), No. 5, 33 C. 627.

Auction-Purchaser.

Right of—at a Court-sale, subject to a mortgage, to question the validity or subsisting character of the mortgage—See CIV. PRO. CODE, No. 162, 3 A.L.J. 202.

Award.

(1) No appeal lies from an order setting aside an—on objection raised under S. 521, C. P. Code—See CIV. PRO. CODE, No. 256, 3 A. L. J. 133.

(2) *Locus standi* to contest the sufficiency of, interest in land whether necessary for—See ACT I OF 1894 (LAND ACQUISITION), No. 15, 10 C. W. N. 195.

(3) An—cannot be invalidated by omission to give notice to parties—See ARBITRATION, No. 1, 29 M. 44.

(4) Appeal against modified award—Court's power to enter into question of misconduct or corruption of arbitrator—See CIV. PRO. CODE, No. 254, 13 P. R. 1906.

(5) Silent as to costs—Procedure to be adopted by Court—See COSTS, No. 1, 35 P. L. R. 1906.

(6) Reference to three arbitrators—Award signed by two arbitrator—omission of third and dissentient arbitrator to sign—Third arbitrator signing award after delivery of same into Court—Legality of award—See CIV. PRO. CODE, No. 259, 33 C. 498.

(7) Order directing an—on a private arbitration to be filed—Appeal—See CIV. PRO. CODE, No. 264, 10 C. W. N. 609 (F.B.).

(8)—under the Land Acquisition Act directing investment of the compensation-money in Government securities, maintainability of appeal against an—See ACT I OF 1894 (LAND ACQUISITION), No. 28, 20 M. 117.

(9) An—under Ss. 26, 30 or 54 of Act I of 1894 (Land Acquisition) is a decree within the meaning of S. 2 of the Civ. Pro. Code—See ACT I OF 1894 (LAND ACQUISITION), No. 21, 53 P.R. 1906.

(10)—made *ex parte*—Act IX of 1899 (Arbitration), S. 4—Validity of *ex parte* award—See ACT IX OF 1899 (ARBITRATION), No. 1, 10 C.W. N. 814.

(11) Application to file—objections to filing of—See CIV. PRO. CODE, No. 261, 33 P.L.R. 1906.

(12) Order to file—under S. 525, C. P. Code, whether appealable on grounds falling under S. 52—See CIV. PRO. CODE, No. 270, F. B. R. (1906), C. P. C. 40.

(13)—directing partition—Stamp—See STAMP ACT, No. 2, 8 Bom. L. R. 869.

Award.—(Concluded).

(14)—on arbitration out of Court, maintainability of suit under Specific Relief Act, S. 80, to enforce an—See SPECIFIC RELIEF ACT, No. 5, U. B. R. (1906), Specific Relief, 80.

(15)—Decree in accordance with an—of private arbitration—Appeal whether lies against such decree—See CIVIL PROCEDURE CODE, No. 262, 2 C.L.J. 153.

See, also, I, Civil Pro. Code, Nos. 256, 258 to 267, 273 and 289.

Babuana Grant.

(1) *Alienability—Hindu Law—Mitakshara—Babuana property, if ancestral in the grantee's hand—Interest of coparcener, attached before death—Claim—Release from attachment—Right of decree-holder to follow property—Civil Procedure Code (Act XIV of 1882), S. 280—Regular suit.*

Property granted as *babuana* in accordance with the *kuluchar* of the Durbhanga Raj to junior members of the family for their maintenance is alienable, subject to the ultimate claim of the grantor, as reversioner, on the extinction of the grantee's descendants in the male line (a).

Such property is ancestral property in the hands of the grantee, and a son of the grantee acquires an interest in it at his birth.

When the undivided property of a joint Mitakshara family was attached in execution of a decree against a coparcener, the fact that the property was, before the judgment-debtor's death, provisionally released from attachment under S. 280, Civ. Pro. Code, does not prevent the decree-holder from working out his rights acquired by virtue of the attachment, if, subsequently to the judgment-debtor's death, the order under S. 280, Civ. Pro. Code, is set aside in a regular suit (b). **Ram Chandra Marwari v. Mudeswar Singh**, 10 C.W.N. 978=33 C. 1158.

PRATT and ORMOND, JJ.

References.—(a) 9 C.W.N. 567=32 C. 683, F. (b) 6 I.A. 88 and 23 C. 829, *relied on*.

Babuana Property.

See, I, Grant, No. 1.

Bailment.

Bailee when not liable for loss of thing bailed—See CIV. PRO. CODE, No. 28, 70 P.R. 1906.

Bania and Zemindar.

See I, Contract, No. 1.

Barrister.

Suit by client for refund of back fee—Privileges of—See BARRISTER and CLIENT, No. 1, 49 P. R. 1906 (F.B.)

Barrister and Client.

(1) *Back fee deposited with barrister, suit for refund of, if maintainable—Privilege of barrister, applicability of—*

In this case, plaintiff engaged the services of a barrister (the defendant-respondent) for a suit and for that purpose handed over to him a certain sum of money. The latter gave a receipt for the money as for fee received but agreed to be refunded in part in the event of failure in the suit. Held, the amount handed over to the barrister was, in its entirety, a fee for professional services and neither the use of the words 'in deposit' in the receipt nor the fact that the barrister promised the client that part of the fee received would, under certain circumstances, be refunded, could affect or alter the essential nature of the transaction between them. The money was paid to him as an advocate and irrespective of any further understanding as to the same between him and the client the whole amount paid, whether 'down-fee' or 'back-fee' must be treated as fees and regarded as the Barrister's honorarium and the rule prohibiting a suit by the client for the recovery of a fee (a) would apply equally to both such fees without any distinction (b). **Thakar Das v. Beechey**, 49 P.R. 1906 (F.B.) = 106 P.L.R. 1906.

CLARK, C.J. and REID and RATTIGAN, JJ.

References.—(a) 51 P.R. 1895 (F.B.) and 25 A. 509, R. (b) 194 P.R. 1888 and 52 P.R. 1894, *overruled*; 32 P.R. 1897, D. 15 P.R. 1897 (Cr.) (F.B.), and 8 M. 188, F.

Bastu land.

See I, Act VIII of 1865 (Bengal), No. 20 and Landlord and Tenant, No. 3.

Belchambers' Rules and Orders.

Nos. 780, 785—See PRACTICE (MISCELLANEOUS), No. 5, 38 C. 827.

Benamsee Transactions.

(1) *Maintainability of suit by real purchaser against benamidar—No evidence of fraud.*

In execution of a decree against plaintiff's grandfather, certain property was sold and purchased by defendant's vendor. Plaintiff sued to have it declared that defendant's vendor's purchase was *benamsee* for plaintiff's father.

Benamie Transactions.—(Continued).

There was no evidence of any fraud about the sale. *Held*, that, in the absence of fraud about the sale, it is open to a plaintiff to come into Court for relief against a *benamie* purchaser on the ground that plaintiff was the real purchaser (a). **Muhammad Farough v. Gokal Chand**, 3 P. R. 1906 = 109 P. L. R. 1906.

CLARK, C. J.

References.—(a) 23 C. 962 ; 20 W. R. 112 and 11 B. 708, cited and *F.* 20 M. 323 ; 20 M. 333 ; *23 B. 406 and 18 B. 372, *R.* and *D.*

(2) *Benamie transfer—Fraudulent intention not carried into effect—Suit to recover from benamidar—Estoppel.*

When, in order to save his properties from being sold in execution of a decree, from which he had preferred an appeal, the owner executed a deed of relinquishment in favour of another, but, being successful in the appeal, sued the latter for a declaration that the deed of relinquishment was colourable and did not convey title :

Held, that the plaintiff was entitled to succeed.

When the fraudulent object of a *benami* transfer has not been carried into effect, the beneficial owner is not precluded from showing the real nature of the transaction.

There is no estoppel in such a case.

The authorities on the point reviewed by MOOREHEAD, J. **Jadu Nath Poddar v. Rup Lal Poddar**, 10 C.W.N. 650 = 4 C.L.J. 22 = 33 C. 907.

RAMPINI and MOOREHEAD, JJ.

(3) *Gift—Sale—Intention—Imaginary consideration inserted in a deed of gift—Evidence of intention—Evidence Act (I of 1872), S. 92—Mother and daughter—Undue influence—Presumption—Unsoundness of mind—Pleadings—Pardanashin, who is.*

The question whether a transaction, which, on its face, purports to be a gift or a sale, is really a *benami* transaction, is purely one of intention.

Notwithstanding that a transaction purported to be a sale and a price was mentioned in the conveyance, it was *held*, on the evidence to be a gift and not a sale—the question being regarded as purely one of intention.

When transfers of property, made by a mother in favour of a daughter, were challenged on the ground of the unsoundness of mind

Benamie Transactions.—(Concluded).

of the donor, but no case of undue influence exercised by the donee on the donor was raised in the pleadings, and evidence was given with reference to the question of unsoundness of mind only:—

Held, that the question of undue influence could not properly be discussed and considered upon such evidence.

The mere relation of daughter to mother in itself suggests nothing in the way of special influence or control.

Their Lordships of the Judicial Committee did not treat, as *purdanashin*, a lady, who had, no objection to communicate when necessary, in matters of business, with men other than members of her own family, who was able to go to Court to give evidence and to attend at the Registrar's office in person to acknowledge her deeds for the purpose of registration. **Is-mail Mussajee Mookerdum v. Hafiz Boo**, 10 C. W. N. 570 (P. C.) = 3 A. L. J. 358 = 8 C. L. J. 484 = 8 Boin. L. R. 379 = 16 M. L. J. 166 = 1 M. L. T. 187 = 33 C. 773.

LORD DAVY, LORD ROBERTSON, LORD ATKINSON, SIR ANDREW SCOBLE AND SIR ARTHUR WILSON.

(4) *Suit to set aside—Conveyance by a Mahomedan purporting to be for value, but in reality one for no consideration—See MAHOMEDAN LAW (GIFT), No. 3, 10 C. W. N. 706.*

(5) *Purchase at revenue-sale, benamie for another, effect of—See ACT II OF 1864 (MADRAS REVENUE RECOVERY), No. 1, 1 M. L. T. 234.*

(6) *Sale-deed—Vendee described as guardian of minor—Benamidar, right of, to sue or appeal in his own name—See CONSTRUCTION (OF DEEDS), No. 2, A. W. N. (1905), 173.*

See, also, I, 147, and Civil Pro. Code, Nos. 210 and 211 ; Contract Act, No. 5 ; Construction of Deeds, No. 15 ; Burden of Proof, No. 22 ; and Revenue Recovery Act, (Madras), No. 2.

Bengal Cess Act.

See ACT IX OF 1880 (BENGAL).

Bengal Civil Courts Act.

See ACT XII OF 1887 (BENGAL).

Bengal Drainage Act.

See under ACT VI OF 1880 (BENGAL.)

Bengal Municipalities Act.

See ACT III OF 1884 (BENGAL).

Bengal Rent Act.

See ACT VIII OF 1869 (BENGAL).

Bengal Rent Recovery Act.

See under ACT X OF 1859 (BENGAL).

Bills of Exchange Act (of England).

SS. 2, 7 (1), 23, 50—Rights of holder of the Bill—Non-liability of an undisclosed principal—See XXVI OF 1881 (NEGOTIABLE INSTRUMENTS) No. 4, 1 M. L. T. 377.

Bill of lading.

Provision in the, as to exemption of carriers from liability, Effect of—See CARRIERS, No. 1, 1 M. L. T. 397.

Birth Tenures.

See I, Pre-emption, No. 16.

Board's Circulars.

See I, 148.

Board of Revenue.

Authority from—to Collector to raise loan on mortgage—Power of Collector to delegate the authority—See ACT VIII OF 1890 (GUARDIANS AND WARDS), No. 10-a, 3 C. L. J. 165.

See, also, I, Act II of 1901 (N.W.P.), No. 10.

Bombay Civil Courts Act.

See ACT XIV OF 1869 (BOMBAY).

Bombay Land Revenue Code.

See ACT V OF 1879 (BOMBAY).

Bombay Mamladar's Courts Act.

See ACT III OF 1876 (BOMBAY).

Bond.

(1)—payable by instalments—default—See LIMITATION ACT, No. 54, 3 A. L. J. 463.

(2) Alteration of—when is said to be material so as to vitiate it—See ALTERATION, No 1, 3 C. L. J. 363.

(3) *Kistbandi* or instalment—for arrears of rent, suit on, not one for rent but for money due under the contract—See ACT VIII OF 1885 (BENGAL TENANCY), No. 23, 4 C. L. J. 219.

See, also, I, Stamp Act (II of 1899), No 1.

Boundaries—(I, 148).**Booker— I, 148.****Buddhist Law (Divorce).**

(1) Husband or wife, right of, to obtain divorce without fault on, or consent of, other party—Necessity of surrender of joint property.

Buddhist Law (Divorce)—(Concluded).

In this case, the husband sued for divorce. The defendant opposed the suit on the ground that her husband had ill-treated her and forced her to leave him. She also denied that he was entitled to a divorce, by Buddhist Law, and the sole question for decision on appeal was, whether a husband, whatever his own conduct may have been, is entitled, by Buddhist Law, to obtain a decree for divorce against his faultless wife, on condition of surrendering to her the joint property and paying the joint debts.

Held, on a consideration of the various texts relating to the question, that the texts in the Dhammathats establish the law, that one of the parties to a marriage can separate from the other, even if the latter does not consent, provided that the properties belonging to both and their liabilities should be divided. There is no insuperable legal bar to divorce against the party desiring it, where that party is prepared to surrender the share of the joint property, to which he would, otherwise, be entitled. *Held*, therefore, that the plaintiff, in this case, having offered to resign the jointly acquired property to the defendant, he may be granted a decree for the divorce sought by him. *Mi Kin Lat v. Nga Ba So*, U.B.R. (1905) Buddhist Law—Divorce, 3.

SHAW, J.

References:—U.B.R. (1897—01), 28, F.

1 L.B.R. 7; U.B.R. (1902—1903) 6 & 12 & 2 B. 624, R.

Buddhist Law (Inheritance).

(1) Grand child of first wife deceased, share of, in the presence of second wife and her child.

The question in this case was as to the share that could pass on inheritance to a deceased Buddhist's grand child by his first wife on the one hand, and his second wife and her daughter on the other. *Held*, that, under the Burmese Law, a grand child, whose parents died, after one grand-parent and before the other, are not to receive any share on the death of the surviving grand-parent, only because, and if, their parents had already received their portion. Otherwise, according to the law, nine-twentieths of the *alotyn* property and one-eighth of the *lletelpwa* property of the grand-parent would pass to the grand child. *Sau Tia v. Mi On Kyau Zau*, 3 L. B. R. 219.

IRWIN, J.

Buddhist Law (Inheritance).—(Concluded).

- (2) *A Methila nun, whether a woman loses rights to property by becoming—Orasa, meaning of.*

The question was whether, under the Burmese Law, a woman by becoming a nun renounced her property and died a civil death. *Held*, a nun does not occupy a position analogous to that of a monk. The Methila nuns especially undergo no ceremony of ordination as a nun but are simply lay devotees corresponding to religious laymen. Consequently, there is nothing in the Buddhist Law to support the proposition that a woman loses her rights to the property held by her, on reason of her having joined the order of Methila nuns.

Held, also, that the eldest born son is the *Orasa* by right and the eldest son (or eldest capable son), whether eldest child or not, clearly has the special privileges possessed by a n *Orasa* son under the Burmese Law. *Mi Min Din v. Mi Hla*, U.B.R. (1905), *Buddhist Law—Inheritance*, 11.

SHAW, J.C.

References.—U.B.R. (1897-01), 54 & 66 & 12 L.B.R. 992, R.

Buddhist Law (Marriage).

- (1) *Husband and wife—Desertion of one by the other for a period, whether dissolves the marriage tie—Dhammathats, effect of custom on.*

The point referred to the Full Bench in this case was, whether the desertion of the husband by the wife or *vice versa*, for the period specified in the Buddhist Law Texts has the effect of dissolving the marriage tie, in the absence of any further and express act of volition on the part of either of them. *Held*, that, even if the actual texts of the *Dhammathats*, supported the proposition that marriage is dissolved by mere desertion, it must be remembered, in applying the personal law, that it is in course of time apt to change by the development of customs inconsistent with such law. Further, it is quite conceivable that a husband and a wife may quarrel and live apart, each on their own means, without the least desire to proceed to the extremity of a divorce and the idea that marriage can be terminated at all, without the wish of one or the other or the parties to it, is contrary to, and inconsistent with, the fundamental principle of the marriage contract. (ADAMSON and LAWIN, JJ).

Buddhist Law (Marriage).—(Concluded).

Held, however, (Fox, J. *dissonante*) that the decision should be based only on the correct interpretation of the Texts, irrespective of how the Burmese community may regard the matter and such texts have laid it down that, at the end of three years of continued desertion of a wife by a husband or at the end of one year's continued desertion by a wife of her husband, the marriage of the husband and wife is dissolved without any further and express act of volition on the part of either party. *Thela Pe v. U Pet*, 8 L.B.R. 175 (F.B.).

ADAMSON, C. J., and LAWIN and FOX, JJ.

References.—3 L.B.R. 85, *overruled*; 2 U.B.R. (1892-00), 58, 86 and 194; 8 I.A. 289; 14 M. I. A. 570; and 10 B. L. R. 139, R.

See, also, I, 149 to 151; *Transfer of Property Act*, No. 35.

Bundelkhand Alienation of Land Act.

SEC. ACT II OF 1908 (BUNDELKHAND).

Burden of proof.

(1) In a suit to set aside a deed, to which the plaintiff has been a party, the onus lies on him to make out a case for setting aside, on equitable grounds, a deed duly executed for a valuable consideration. *Ashidbai v. Abdulla Haji Mahomed*, 8 Bom. L. R. 852.

CHANDAVARKAR, J.

Reference.—7 App. Cas. 311, 7.

- (2) *Limitation—suit for cancellation of instrument—proof of knowledge of facts entitling cancellation of instrument.*

When a plaintiff sues for cancellation of an instrument and when he sets out the facts entitling him to have the instrument cancelled and when he alleges that those facts became known to him at a certain time, it is incumbent on a defendant, who pleads limitation, to dislodge the plaintiff from his position and to allege and prove a knowledge prior to the period from which time begins to run. If no evidence were given on either side, the plea of limitation would fail. *Tants v. Gajadhar*, 2 N.L.R. 98.

ISMAY, J.C.

References.—26 M. 291, 6 A. 406, 17 B. 341, 17 C. 518, 24 B. 260, 22 C. 609 and 1 C.W.N. 543, R.

- (3) *Suit by defuncted claimant under S. 283 Civ. Pro. Code.*

When a plaintiff seeks by a suit under S. 283, C.P.C., to establish his right to property, which

Burden of proof.—(Continued).

was attached in execution, after having failed in an attempt to procure the removal of the attachment, the burden of proving that he acquired the property in good faith and for consideration lies on him. *Narayan Ganesh Ghatate v. Bhioraj*, 2 N.L.R. 87.

BATTEN, A.J.C.

References.—6 C.P.L.R. 81 and 9 C.P.L.R. 142, R.

(4) *Patni sale—Suit by purchaser—Suit for possession—Land within patni area—Mal or lakheraj.*

When a purchaser at a *patni* sale proves his purchase and, on his applying for, possession, is resisted by persons holding lands included within the ambit of the *patni* tenure, who set up the defence that the lands held by them are *lakheraj* and not *mal*, it is for the defendants to prove that the lands have been held not under the *patni* tenure, but as *lakheraj* (a). *Sashi Bhusan Bakshi v. Mahomed Matala*, 4 C. L. J. 548.

BRETT & GUPTA, JJ.

Reference:—(a) 14 M. I. A. 152, D.

(5)—as to Khatris being governed by Customary law of agricultural tribes—See CUSTOM (PUNJAB), No. 18, 12 P. R. 1906.

(6) Claim for possession of property—Plaintiff denying defendant's alleged right to easement—See EASEMENTS, No. 1, 26 P.L.R. 1906.

(7)—of a special custom inconsistent with ordinary rules of inheritance—See CUSTOM (PUNJAB), No. 18, 18 P. R. 1906.

(8) Presumption of death—See EVIDENCE ACT (I OF 1872), No. 26, 8 Bom. L. R. 226.

(9) The—is on the plaintiff, in the first instance, in a suit by a landlord for possession of land on the ground that it is *mal* and not *lakheraj*—See LANDLORD and TENANT, No. 2, 10 C. W. N. 484.

(10) In a suit by a purchaser at a revenue sale under Bengal Act XI of 1859, against an occupancy raiyat, the—is on the latter to show that at the time of the sale he was a raiyat within S. 21 of Act VIII of 1885 (B.C.)—See ACT XI OF 1859 (BENGAL), No. 2, 10 C.W.N. 497.

(11) Extent of—on plaintiff in a suit for malicious prosecution, where he was convicted in a Court and acquitted only on appeal—See MALICIOUS PROSECUTION, No. 2, 16 M.L.J. 18.

(12) Landlord and tenant, suit between—

Burden of proof.—(Continued.)

Denial of liability to execute repairs—See TRANSFER OF PROPERTY ACT, No. 112, 3 A.L.J. 134.

(13) Custom of succession at variance with *lex loci*—See HINDU LAW (MARRIAGE), No. 1, 3 A.L.J. 209.

(14) Suit to recover possession—Burden on plaintiff to show a better right to possession in himself than in the defendant—See POSSESSION, No. 1, 8 Bom. L.R. 96.

(15) —as to valid attestation of mortgage-deed sued on—Applicability of *maxim rite omnia esse acta*—See TRANSFER OF PROPERTY ACT, No. 42, 2 N.L.R. 10.

(16) In a suit governed by Art. 144 the—is on the defendant to show when the adverse possession he relies on commenced. See LIMITATION ACT, No. 108, 2 N.L.R. 82.

(17) —in a suit by vendee for possession—See LIMITATION ACT, No. 108, A.W.N. (1906), 95.

(18) Onus of proving that any particular lands were included in the permanent settlement of 1798—See REGULATION XI OF 1825 (BENGAL), No. 1, 3 C.L.J. 816.

(19) Suit for ejectment—On whom—lies—See LIMITATION ACT, No. 107, 10 C.W.N. 680.

(20) Suit by dismissed trustee against Temple Committee for declaration that dismissal was wrong and illegal—Onus on plaintiff—See ACT XX OF 1863 (RELIGIOUS ENDOWMENTS), No. 1, 8 Bom. L.R. 407.

(21)—as to adverse possession among co-sharers—See ADVERSE POSSESSION, No. 5, 39 P.L.R. 1906.

(22) What plaintiff has to prove in a suit where adverse possession is pleaded by defendant—See ADVERSE POSSESSION, No. 4, 73 P.L.R. 1906.

(23) Member of a joint Hindu family going into trade with funds not belonging to family—whether acquisition of trade joint family property or self-acquisition of acquirer—See HINDU LAW (SELF ACQUISITION), No. 1, 25 P.R. 1906.

(24) Right to pre-emption based on custom—who to prove discontinuance of such custom—See PRE-EMPTION, No. 19, A.W.N. (1906), 174.

(25) Suit for possession—defence of limitation—Plaintiff to prove subsisting title—See POSSESSION, No. 3, 3 A.L.J. 567.

Burden of proof.—(Continued).

(36)—lies on him who alleges that the law in a Foreign State differs from British Laws—See **CONFLICT OF LAWS**, No. 1, 8 Bom. L. R. 525.

(37) Claim for exemption from enhancement of rent—What has to be proved—**ACT VIII OF 1885 (B. C.)**, S. 50—See **ACT VIII OF 1885 (BENGAL TENANCY)**, No. 20, 4 C.L.J. 87.

(38) Presumption of jointness in *Dayabhaga* families—Proof of exclusion—See **HINDU LAW (JOINT FAMILY)**, No. 14, 4 C.L.J. 56.

(39) Hindu Law—disqualification from inheritance—presumption—leprosy—See **HINDU LAW (INHERITANCE)**, No. 9, 4 C.L.J. 323.

(30) Suit for damages for malicious arrest—on whom—lies—See **MALICIOUS ARREST**, No. 1, 29 M. 308.

(31) Suit for damages for false imprisonment—On whom—lies—See **MALICIOUS ARREST**, No. 1, 29 M. 308.

(32) The onus of proving that a particular form of vicinage gives a preferential right of pre-emption rests on the person asserting it—See **CUSTOM (PECULIAR TO PUNJAB)**, No. 35, 47 P. R. 1906.

(33)—as to Turwad necessity for debt incurred by *Karnavan*—See **MAHUMAKHATTAYAM LAW (THEFT)**, No. 1, 21 T.L. R. 389.

(34)—as to discharge of amount due under a pro-note, resting on defendant admitting execution—See **PROMISSORY NOTE**, No. 8, 10 C. 215.

(35)—in matter of title to succeed to religious institutions—See **CUSTOMS (PECULIAR TO PUNJAB)**, No. 68, 143 P.L.R. 1906.

(36) Presumption of death of missing person—See **MAHOMEDAN LAW (SUCCESSION)**, No. 1, 2 C.L.J. 396 (P.C.)

(37) Solicitor-executor preparing and attesting will—Clause permitting him to charge for professional and other services—How Court to be satisfied as to *bona fides* and genuineness of clause—See **WILL**, No. 2, 9 C. W. N. 769 (P.C.)

See, also, *I, Accounts*, No. 4; *Act I of 1841 (Probate and Administration)*, No. 9; *Act XXVI of 1906 (Oudh)*, No. 1; *Adverse Possession*, No. 3; *Civ. Pro. Code*, Nos. 33, 183 and 328; *Contract Act*, Nos. 4 and 13; *Chaukidari Chakran Land*, No. 2; *Costs*, No. 12; *Decree*, No. 9;

Burden of proof.—(Concluded).

See, also, *I, Evidence Act*, Nos. 30, 32 and 33;

Hindu Law (Alienation), No. 1;

„ *(Inheritance)*, No. 1;

„ *(Joint family)*, Nos. 1, 3 and 9;

„ *(Legitimacy)*, No. 2;

„ *(Reversioners)*, No. 2;

„ *(Self-Acquisition)*,

No. 1.

Inam No. 3; *International Law*,

No. 1; *Landlord and*

Tenant, No. 17; *Limitation*

Act, Nos. 83 and 116;

Mahomedan Law (Adoption), No.

1;

(Legitimacy), No.

2;

(Succession), No.

2;

Mortgage (Redemption), No. 9;

Pre-emption, Nos. 5 and 10;

Trade Mark, No. 1; and *Transfer*

of Property Act, No. 70;

and *Will*, Nos. 4 and 14.

Burial.

Right of—and of reciting prayers before burial—Civil right—See *Civ. Pro Code*, No. 8, 16 M.L.J. 471.

Burmese Law (Kettima Adoption).

See *I*, 153.

Burning Ghat.

(1) *Acquisition by Government—Compensation—Respective claims of Municipality and owner of the soil—Dedication of user—Extinction of use—Reverter to owner—Market-value of burning ground—Bengal Municipal Act (III B. C. of 1884), S. 30—Construction—“And”—“Ghat”—Meaning.*

An owner of lands may appropriate land to public use and yet retain in himself all such rights, in the soil as are compatible with the full exercise and enjoyment of the Public use, to which the property has been devoted, and it is not essential to constitute a valid dedication that legal title should pass from the owner. Nor is it inconsistent with an effectual dedication that the owner should continue to make any and all uses of the land, which do not interfere with the uses for which it is dedicated:

Burning Ghat.—(Concluded.)

Held, in respect of land, which had not been expressly dedicated but was used by the public as a burning ground, that the circumstances of the case showed that the owner made a dedication of the user of the property for the purposes of a burning ground, such dedication to remain in force only so long as the property continued to be used as a burning ground.

When the sole use to which property had been dedicated becomes impossible of execution by reason of a statutory acquisition and compulsory use, for purposes inconsistent with the original dedication, it reverts to the dedicator or his representative.

Although it is an essential element of a good dedication that it should be irrevocable, nevertheless when, after a valid dedication has been made, the use for which the property dedicated becomes impossible of execution or the object of the use wholly fails, there is an abandonment, in consequence of which the rights of the public therein fail and a reversion takes place, the dedication being taken to have spent its force when the use ceases (a).

Unlike the road-land which was acquired by the Collector in the above case, the burning ground in this case, treated as such, had a market-value, which had been actually assessed. Therefore, the person who was proved to be owner of the soil was entitled to the compensation assessed.

The word *ghat* in S. 30 of the Bengal Municipal Act does not include a tract of land used as a burning ground.

The sub-soil under a *ghat* does not vest in the Municipality under S. 30 of the Act; but the *ghat* itself does.

The Legislature, by enacting S. 30, intended that such roads, etc., as are private property, or are maintained by Government or at the public expense should not vest in the Municipality. **The Chairman, Howrah Municipality v. Khettra Kristo Mitter**, 10 C.W.N. 1044=4 C. L.J. 343=83 C. 1290.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 1 C.W.N. 698=24 I.A. 177=35 C. 194, D.

Cancellation.

(1)—*Of sale deed on the ground of fraud and misrepresentation, suit by vendee for—purchaser's knowledge of defect in vendor's*

Cancellation.—(Concluded.)

title, effect of, on usual covenant of title implied.

Plaintiff sued for cancellation of a sale deed, in his favor, on the ground of fraud and misrepresentation practised by the vendors, claiming a lien on the plaint properties, for recovery of the purchase money paid, and praying that such lien ought to take precedence over a charge under a hypothecation decree, to which he himself had been a party. The lower Court found on the evidence and probabilities that the defendants did not make any misrepresentations to the plaintiff and that the plaintiff purchased the properties with full knowledge of the nature of the defendants' title. Admittedly, the plaintiff was told that the lands were held on an *Adukurathu Otti* and he did not make further enquiries about the *Otti*. *Held*, that a purchaser who has notice of a partial fact or instrument should be held to have notice of all connected facts and instruments and that, where the defect of the vendor's title was also within the knowledge of the purchaser, he could not claim the benefit of the usual implied covenants for title (a); *held*, also, that, if a prior mortgagee, who is made a party to a suit by a puisne mortgagee, omits to set up his prior lien and a decree is passed generally for sale without imposing a liability on the subsequent mortgagee, cannot afterwards bring a suit to enforce his prior lien. (b) **Kanakku Yelayudhan Padmanabhan v. Mathevan Kali**, 21 T. L. R. 256.

SADASIYA AIYAR, C. J., & GOVINDA PILLAI and PADMANABHA AIYAR, JJ.

References.—(a) 14 T.L.R. 221; 19 T. L. R. 185 & 26 B. 519, R. (b) 24 A. 429 and 31 C. 259 R.

See, also, I, Contract Act, No. 2.

Carrier.

Suit against a, for compensation for non-delivery of goods, governed by Art. 31 of the Limitation Act—*See LIMITATION ACT (XV of 1877), No. 47, 108 P.R. 1906.*

Carriers.

(1) *Liability of, for negligence and damage to goods—Bill of lading—Provision as to exemption from liability, effect of.*

The goods (rice bags) belonging to the plaintiff were shipped in a steamer belonging to the defendant company, for delivery to the plain

Carriers.—(Concluded).

tiff's agent at another port, and, on arrival at that port, were placed by the Company on the foreshore, where, however, they were destroyed under the orders of the Municipal authorities, on the ground that they had become damaged by rain and unfit for consumption.

The condition in the bill of lading ran thus :—“In all cases and under all circumstances, the liability of the Company shall absolutely cease, when the goods are free of ship's tackle, and, thereupon, the goods shall be, for all purposes and in every respect, at the risk of the shipper or consignee.”

• In a suit by the plaintiff for recovery of the value of the rice so damaged,

Held—Per SUBRAHMANYA AIYAR, J.—The Company, in landing the goods without precautions to prevent damage to them, failed to take the same care of the plaintiff's goods as a prudent person would, in similar circumstances, have taken of like goods of his own, and the damage was, therefore, the result of the Company's negligence. The condition in the Bill of lading puts an end to the Company's liability as carriers, when the goods leave the ship's tackle, but constitutes their subsequent possession, until delivery, as that of bailees. For, if it were otherwise, the Bill of lading might be construed so as to exempt the Company even from wilful misconduct on the part of the Company's servants (a).

Per MILLER, J. (*contra*) :—The Company are amply protected, against all responsibility, by the terms of the Bill of lading and are, therefore, not liable for damages. The general exception of negligence will apply to all stages of the transaction covered by the contract, and is not restricted to that stage, during which the goods are actually in the ship (b); but if there is a special clause dealing with a particular stage of the transaction, that must be applied, to the exclusion of the general exception, (c) and it has been frequently held that an exception against negligence is valid if clearly expressed (d). **K.V.S. Sheikh Mahamed Ravuthar v. The B.I.S.N. Company**, 1 M.L.T. 387. SUBRAHMANYA AIYAR and MILLER, JJ.

References :—(a) 10 Q.B. 256, F; 26 L. T. 704, Cons; 22 B. 184, R. (b) 18 B. 571, 10 C. 489, Compd. (c) 22 B. 184, Compd. (d) 10 C. 489, 18 B. 571, F. (e) 32 L.J.Q.B. 77 Appl.

Carriers Act.

See ACT III of 1855.

Caste Disabilities Removal Act.

SEE ACT XXI of 1850.

Cause of action.

- (1) *Pro-note, Cause of action existing independently of—Maintainability of suit on.*

When a cause of action for money is complete in itself, whether for goods sold or for money lent or for any other claim, and the debtor, then, gives a bill or note to the creditor for payment of the money at a future time, the creditor, if the bill or note is not paid at maturity, may sue on the original consideration, provided he has not endorsed or lost or parted with the bill or note, under such circumstances as to make the debtor liable upon it to some third person, but when the original cause of action is the bill or note itself and does not exist independently of it, there is no cause of action for money lent otherwise than upon the note itself. **Yaralagadda Yeeragaravayya v. Gorantla Ramayya**, 15 M.L.J. 484 = 20M. 111.

BODD'S and SANKARAN NAIR, JJ.

References.—7 C. 256, F. 10 M. 94, Distl.

- * (2) Whether—for a suit by judgment-debtor to recover money paid to the decree-holder under an agreement, accrues before actual execution has been taken out in spite of the agreement—See RIGHT OF SUIT, No. 2, 16 M. L. J. 54.

- (3) Meaning of the term—See LETTERS PATENT (BOMBAY), No. 2, 30 B. 167.

- (4) Suit by a dismissed servant of Government against the Secretary of State—See SECRETARY OF STATE, No. 1, 33 C. 669.

- (5) Suit on an oral agreement embodied in an unstamped pro-note—admission by defendant—See STAMP ACT (II of 1899), No. 6, 66 P. R. 1906.

- (6) *suit for cancellation of a deed for fraud and misrepresentation—Cause of action in, plaint, alteration of, whether permissible.*

This was a suit for cancellation of a sale-deed in favor of plaintiff, on the ground of fraud and misrepresentation practised upon him by the vendors. The basis of the suit was the alleged fraud and misrepresentation on the part of the defendants and, there having been no proof of them, the suit failed. It was, however, contended on appeal that, notwithstanding the absence of proof of the fraud set up, plaintiff was entitled to succeed on the ground of his right

Cause of action.—(Concluded).

to claim damages as for the breach of an express covenant found in the deed sought to be cancelled.

Held, that, no reference whatever having been made in the plaint to any covenant for title, it was not competent to the plaintiff to alter his plaint, based on one cause of action giving rise to one set of reliefs, into one on a different cause of action, giving rise to a different and inconsistent set of reliefs. *Kanakku Yelayudhan Padmanabhan v. Mathavan Nall*, 21 T. L. R. 255.

SADASIVA AIYAR, C. J. & GOVINDA PILLAI and
PADMANABHA AIYAR, JJ.

(7) Where a promissory note is the sole—whether liability independent of note could form basis of suit—See PROMISSORY NOTE, No. 3, 9 O. C. 315.

(8)—against different transferees of widow, joined in a single suit by reversioner, whether amounts to misjoinder of—See CIV. PRO. CODE, No. 54, 9 O. C. 326.

(9) Words imputing unchastity to wife afford—no to husband without proof of special damage—See DEFAMATION, No. 1, 4 C.L.J. 383.

(10) Imputation of sorcery against wife affords no—to husband for defamation—See DEFAMATION, No. 2, 4 C.L.J. 390.

(11) Appropriation of debt due to minor by third party—Whether there is any, as against such third party—See JOINT TORT-FEASORS, No. 1, 147 P.L.R. 66.

See 1, 157, 158.

See, also, 1, Civ. Pro. Code, Nos. 25 & 26; Contract Act, No. 18; Ghatwali Tenure, No. 1; Limitation, No. 21; Limitation Act, Nos. 16, 28 & 108; Misjoinder of Causes of action, Nos. 2 & 4; Pleadings, No. 6; Pre-emption, No. 9; Res Judicata, No. 29; Slender of Title, No. 1.

Caveat.

1, Act V of 1881 (Probate and Administration), No. 5.

Caveat Emptor.

See 1, Civil Pro. Code, No. 206 and Transfer of Pro. Act, No. 18.

Certified purchase.

Meaning of—See CIV. PRO. CODE, No. 187, 8 Bom. L. R. 573.

See, also, 1, Res Judicata, No. 4.

Cess.

—1, Act III of 1901 (U.P. Land Revenue).

Cess Act (Bengal).

See Act IX of 1880.

Chadar Andasi.

—1, Act XV of 1856, No. 1.

Chakran Land.

—1, Chowkidari Chakran Land, No. 1.

ChamPERTY.

(1) See under CONTRACT ACT, No. 8, 20 P.L.R. 1906.

(2) The sale of a mere right to sue is bad for—See ACTIONABLE CLAIM, No. 1, 2 N. L. R. 17.

(3)—Agreement to supply funds for suit, whether—See CONTRACT ACT, No. 8, 26 P. R. 1906.

See, also, 1, Right of suit, No. 23.

Charge.

(1) Mortgages under mortgage executed between date of default and date of sale entitled to—on surplus sale-proceeds on sale for arrears of Revenue—See TRANSFER OF PROPERTY ACT, No. 53, 8 C.L.J. 52.

(2) A plaintiff attaching the property of the defendant before judgment has no—on the property attached, so as to have priority over other creditors—See CIV. PRO. CODE, No. 100, 10 C. W. N. 684.

(3) Decree on compromise creating—for maintenance—Liability of bona fide transferee for value without notice—See TRANSFER OF PROPERTY ACT, No. 17, A.W.N. 1906, 165.

(4) Whether a mortgagor redeeming a mortgage has a—on the interests of the other co-mortgagors for the amount payable by the latter—See MORTGAGE (REDEMPTION), No. 6, 10 C. W. N. 626 (F.S.).

(5) Redemption of whole property by purchaser in execution of a simple money decree against one of the mortgagors—His right to a—on the shares of other mortgagors—See MORTGAGE (CONTRIBUTION), Nos. 4 & 5, A. W. N. (1906), 179 & 173.

(6) Money paid by the purchaser of a part of the mortgaged property to pay off the prior mortgage. See TRANSFER OF PROPERTY ACT, No. 53, 9 O. C. 250.

(7) Whether maintenance of a Hindu widow is a—on the husband's estate—See HINDU LAW (MAINTENANCE), No. 2, 10 C. W. N. 1074.

Charge.—(Concluded).

(8) Right of a co-mortgagor who was paid off the entire mortgage-debt to a—on the mortgaged property—See **TRANSFER OF PROPERTY ACT (IV OF 1882)**, No. 84, 4 C. L. J. 79.

(9) Vendor's—for unpaid purchase-money, limitation for suit to enforce—See **LIMITATION ACT**, No. 95, 29 M. 305.

(10)—under S. 65 of Bengal Tenancy Act, whether one within S. 100 of Transfer of Property Act—See **ACT VIII OF 1882 (BENGAL TENANCY)**, No. 23, 4 C. L. J. 219.

(11) Suit for recovery of arrears of malikhana—no—claimed on land—See **LIMITATION ACT**, No. 72, 28 C. 908.

(12) Suit for sale on foot of mortgage of property subject to a charge for maintenance—See **TRANSFER OF PROPERTY ACT**, No. 77, 3 A.L.J. 848.

(13) Suit under Transfer of Property Act, S. 67, compromised—Simple money-decree with a charge on property—Decree holder how to enforce charge—See **TRANSFER OF PROPERTY ACT (IV OF 1882)**, No. 102, 2 A.L.J. 479—A. W. N. (1906), 189.

(14) Assignment of—on immovable property—See **REGISTRATION ACT (III OF 1877)**, No. 14, 190 P. L. R. 1905.

See, also, *1, Civ. Pro. Code, No. 116; Mortgage (Extinction of Security), No. 1, Mortgage (Redemption), Nos. 16 & 19; Mahomedan Law, (Wakf), No. 2; Transfer of Property Act, Nos. 12, 17, 19, 21, 40, 41, 66, 74 & 78.*

Charter Act.

S. 15—The power of transfer contained in—is dependent upon the exercise of appellate jurisdiction—See **LETTERS PATENT (BOMBAY)**, No. 3, 8 C.L.J. 5 (P.C.).

Charter-party.

—*1, Mercantile Law, No. 1.*

Chattans.—1, Customs, No. 5.**Chief of the Punjab.**

See *1, Civil Pro. Code, No. 94 and Punjab Courts Act, No. 1.*

Chandhari Chakran Land.

Purchaser of estate at Revenue-sale—Sale—Title to—See **ACT VI OF 1870 (BENGAL)**, No. 2, 10 C.W.N. 222.

See *1, 461—464.*

Chit Fund.

(1) Association consisting of more than 20 persons—Unregistered Company—Maintainability of suit for recovery of subscription—See **ACT VI OF 1882 (COMPANIES)**, No. 2, 1 M.L.T. 106.

(2)—consisting of more than twenty members, necessity for registration, under the Companies' Act—See **ACT VI OF 1882 (COMPANIES)**, No. 1, 1 M. L. T. 287.

Chitty.

(1)—transaction, security-bond by priced subscriber under, provision in, for payment in entirety on default in instalment, whether enforceable by assignee.

A security bond, executed by the defendants to the foreman of the Chitty transaction in question, was assigned by the latter to the plaintiff, an unpriced subscriber, in discharge of the subscriptions paid by him. On plaintiff suing under the security-bond for recovery, in a lump, of the subscriptions due by the defendants, it was urged that the plaintiff, as the assignee, could not claim the benefit of the clause in the security bond, as to payment in a lump on default, since the clause was a penal one and could enure only for the benefit of the assignor. *Held*, that the above clause was not a penal one so as to be unenforceable (a) and, the assignor's right to enforce such a stipulation not having been disputed, such a right could be claimed as well by the assignee, on the general principle that an assignee is ordinarily entitled to all the rights of his assignor. **Krishnan Naman v. Naman Aliyappen**, 21 T. L. R. 52.

VENKOBACHARIAR, C.J., and PADMANABHA IYAR, J.

Reference:—(a) 15 T. L. R. 182, F.

Chota Nagpur Encumbered Estates Act.

See **ACT VI OF 1876 (BENGAL)**.

Chundawand.

Custom of, in matters of succession—See **CUSTOMS (PECULIAR TO PUNJAB)**, No. 63, 142 P. L. R. 1906.

Circuit Committee.

Proceedings of—is good evidence in questions relating to rights of Government with respect to Zemindari Property—See **SARWAR TILAKES**, No. 2, 8 C. L. J. 1 (F. C.).

Civil Court.

Magistrate exercising jurisdiction under S. 488 of the Cr. P. Code is bound by decree of—touching matters he has to decide, in the proceedings—See *DEGREE*, No. 1, 9 O.C. 49 (B.)

See *I, Act X of 1876 (Bombay), No. 1; Criminal Pro. Code, No. 1; Civil Pro. Code, No. 318; Kumaon Rules, 1894, No. 1 and Jurisdiction (of Civil Courts), No. 31.*

Civil Court (Lower Burma).

I, Civ. Pro. Code, No. 356.

Civil Courts.

Power of—to question reasons assigned by Revenue authorities for granting or refusing applications for Dakhast—See *DARKHAST RULES*, No. 1, 1 M.L.T. 278.

Civil Courts Act (Bengal).

SEE ACT XII OF 1887 (Bengal).

Civil Courts Act (Bombay).

SEE ACT XIV OF 1869 (BOMBAY CIVIL COURTS),

Civil Procedure Code (Act XIV of 1882).

(1) The provisions of the Civ. Pro. Code are not exhaustive.

A lunatic may sue through his next friend even though not adjudged a lunatic under any law (a). *Rasik Lal Dutt v. Bidhu Mukhi Dasi*, 10 C.W.N. 719=4 C.L.J. 306=33 C. 1004.

RAMPINI AND MOOKERJEE, JJ.

Reference.—(a) 6 M. 380, Diss.

(2) S. 2—An award under Ss. 26, 30 and 54 of Act I of 1894 (Land Acquisition) is a decree within the meaning of—See ACT I OF 1894 (LAND ACQUISITION), No. 21, 53 P.R. 1906.

See also, *I, Decree. No. 1; Act II of 1901 (N. W. P. Tenancy), Nos. 7 & 8; and Civ. Pro. Code, Nos. 5 & 6.*

(3) Ss. 2, 108, 588 (9)—applicability of S. 108 to execution proceedings—'Ex parte decree', meaning of—Appeal from order rejecting application to set aside ex parte decree—Inherent power of Court to set aside its own order, made ex parte.

S. 108 of the Code of Civil Procedure applies to execution-proceedings. When, therefore, an order was passed *ex parte* in the execution proceedings, directing the payment of a certain sum of money by the judgment-debtors to the decree-holder in satisfaction of the decree, the order was one under S. 244, C.P.C., and was a 'decree' within the meaning of S. 2 of the Code, and if it was passed without service of any notice under S. 248, C. P. C., upon one of the

Civil Procedure Code (Act XIV of 1882).—
(Continued).

judgment-debtors, he may apply under S. 108 C. P. C. to have the *ex parte* order set aside.

An appeal would lie, under S. 588, cl. (9), C. P. C., from an order, dismissing an application under S. 108 of the Code on the ground that S. 108 of the Code did not apply to execution proceedings, if the application could be entertained under that section.

The Court has an inherent power to prevent an abuse of its processes and is competent to revise an order made in the absence of the opposite party and without service of notice upon him, which the law directs should be served. *Krishna Chandra Pal v. Protap Chandra Pal*, 3 C. L. J. 276.

MITRA AND GEIDT, JJ.

(4) Ss. 2, 562, 583, and 588—Restitution—Decree *ex parte*, properly taken in execution of—Decree set aside and case remanded in appeal, effect of—Court, remanding a case, power of—

When a decree is set aside on appeal and the case is remanded under S. 562, the appellant is entitled to restitution of the property taken possession of, in execution of the decree so set aside, although an appeal has been preferred against the order of remand. Every Court, which sets aside an order or decree, has inherent power to order restitution of anything taken in execution of the decree or order set aside. (a) *Saroda Prosad Chatterjee v. Saudamini Debye*, 3 C.L.J. 181.

RAMPINI AND BODILLY, JJ.

References.—(a) 14 C. 484 and 21 C. 989, *v. S. 4—I, Act I of 1879 (Chota Nagpur Landlord and Tenant), No. 1.*

(5) S. 11—Suit of a civil nature—Idol, location of.

Suits as to religious rites and ceremonies, which involve no question of the right to property or to an office, are not suits of a civil nature and, therefore, not cognisable by a Civil Court.

A worshipper of certain idols cannot, therefore, maintain a suit against the custodians of these idols to locate them in a certain temple, instead of in another temple, so long as his right to worship the idols is not denied. *Lokenath Misra v. Dasarathi Tewari*, 3 C.L. J. 590=32 C. 1072=10 C.W.N. 505.

PRATT AND BODILLY, JJ.

Civil Procedure Code (Act XIV of 1902).
—(Continued).

References.—5 B. 80 and 11 M.L.J. 215, F. 21 C. 408, *Distd.*

(6) S. 11—See **RELIGIOUS ENDOWMENTS**, No. 1, 16 M.L.J. 150.

(7) S. 11—*Offering—Sacrifice—Suit for offering, maintainability of.*

A and B were the owners of a zemindari within which was an idol X. According to an immemorial custom, the flesh of the first goat offered to X by the *sebits* was taken by the zemindars. Upon the death of A, the *sebits* refused to allow his representative, C, to have a share of the goat. C sued for declaration of right to share in the flesh of the sacrificial goat :

Held, that the suit was maintainable.
Durga Charan Pathak v. Rajabala Debi, 4 C.L.J. 469.

MACLEAN, C.J. AND MOOKERJEE, J.

(8) S. 11—*Explanation—Suit of civil nature—Right of burial and of reciting prayers before burial.*

In suits relating purely to rituals or religious observances, the Civil Courts have no jurisdiction; but the Courts are bound to enquire into the questions of religion or ritual, which are material for determining civil rights in dispute between the parties (a).

When the matter is of a mixed spiritual and temporal character, the question will depend upon the nature of the connection between the facts, and will be, in fact, whether the spiritual question is so intrinsically connected with the temporal, as to be inseparable from it. If so, it would be the duty of the Courts, in trying the civil disputes, to enquire into the spiritual matter thus intimately related.

The right of burial is a civil right (b) and, if the recitation of prayer at a particular spot in the mosque is a necessary part of the burial, and the plaintiffs are hindered from exercising their customary right in such matter, the interference by the defendants would be an invasion of their right, giving rise to a suit cognizable by Civil Courts. **Koeni Mohamadan Meera Sahib Tharagan v. M. Mamadu Meera Sahib Tharagan**, 10 M.L.J. 471 = I.M.L.T. 423.

SUBRAHMANYA AYYAR AND MILLER, JJ.

References :—(a) 7 B. 323, R. (b) 26 B. 198, R

Civil Procedure Code (Act XIV of 1902).
(Continued).

(8-a) Ss. 12, 13, 622—*Scope of Ss. 12 and 13—Procedure to be adopted under both the sections—Dismissal of suit rightly, though on wrong grounds—High Court's power of revision.*

Where a suit is first instituted in a Sub-Judge's Court, and a second suit is instituted for the same relief in a District Munsiff's Court, the District Munsiff ought to dismiss the suit before him, as barred by S. 12, and not merely keep it pending the decision of the earlier suit in the Sub-Judge's Court. S. 12 is in some respects similar to the principle of S. 13 (a); and both are aimed against superfluous suits, and the procedure under both the sections ought, therefore, to be the same. Where the Munsiff, under the above circumstances, did not dismiss the suit, but kept it pending, and then it was moved into the sub-Judge's Court, and dismissed by him, the District Judge has jurisdiction to hear the appeal against that decision, and should do so. Where the District Judge rightly dismisses such an appeal, though wrong ground, the High Court will not interfere in revision. **Yenkappachari v. Manjunatha Kamti**, 16 M.L.J. 526.

MILLER, J.

Reference :—(a) 11 A. 154, R.

S. 11—I, 163 and 166; and *Criminal Pro. Code*, No. 2; *Fraud*, No. 11.

(9) S. 13—*Res judicata—mortgage—Redemption of entirety.*

To maintain the plea of *res judicata*, it must appear, from an inspection of the record, that the person, whose interest is sought to bind, was in some way a party to the suit. A mere intention on the part of one of the parties that it should be for his benefit is not enough to support the plea.

A mortgagor of an undivided share may redeem the entirety, at any rate if the mortgagee does not object and may be compelled to do so if required by the mortgagee. **Chaudhri Ahmad Baksh v. Seth Raghubar Dayal**, 7 Bom. L.R. 912 (P.C.) = 2 C.L.J. 418 = 2 A.L.J. 813 = 10 C.W.N. 115 = 15 M.L.J. 407 = 9 O.C. 7 = 28 A. I = 32 I.A. 229.

LORD DAVY, SIR ANDREW SCORLE and SIR ARTHUR WILSON.

(10) S. 13—*Decision in a previous suit of small cause nature tried as original suit—*

Civil Procedure Code (Act XIV of 1908).
—(Continued).

Subsequent suit involving same issue, if barred by res judicata.

The point that arose for decision and was referred to the Full Bench in this case was, whether the decision upon a matter which was directly and substantially in issue between the same parties in a previous suit, which, though tried by a District Munsiff as an original suit, was one of a small cause nature and, therefore, in which no second appeal lay, was binding as *res judicata* in respect of the same matter in a subsequent suit, in which a second appeal lay. *Held*, that the decision in the former suit could not operate as *res judicata*, the fact that the former suit was one of a small cause nature preventing the decision therein from operating as *res judicata* in the latter suit. *ANANAI Gounden and others v. Nannammal*, 16 M.L.J. 41=1 M. L. T. 25=20 M. 195.

WHITTE, C. J. and SUBRAHMANYA AYYAR and DAVIES, JJ.

References.—25 C. 571 and 28 C. 79, *Diss.* 15 B. 104, 17 M. 109, 15 M. 111, 18 M. 189, *Refd.* to and *Folld.* 17 M. 273, 24 M. 244 and 13 M. L. J. 23, *overruled*.

(11) S. 13.—*Res judicata*.—*Ground of decision as clearly stated in the prior judgment can alone form basis of*—*Non-collection of rent, effect of*—

Suit by a Zemindar for recovery of *kattubadi* in respect of certain inam lands. A previous suit for *kattubadi* for certain prior *faislas*, in respect of the same inam, was dismissed by the appellate Court as barred on the ground that the plaintiff had not collected any *kattubadi* within twelve years prior to the date of that suit, but the necessary issue, whether the plaintiff was refused the enjoyment of the right for those twelve years was left undetermined. This previous judgment was pleaded as *res judicata* in bar of the present suit. *Held*, there was no *res judicata*, since the finding, in the prior judgment, as to the non-collection of *kattubadi* for twelve years, was not one of final adjudication on the essential point of denial of the plaintiff's right to the *kattubadi*. It is neither competent nor proper for the Court to depart from the clear statement in the judgment as to what was decided and, because such decision would, by itself, be unsound with reference to the reason assigned for it, to substitute something else quite different, in order to make

Civil Procedure Code (Act XIV of 1908).
—(Continued).

it seem right so as to enable one of the parties thereto to found a plea of *res judicata*, thereon. *Jalasutram Lakshminarayan v. Bomma Devara Venkata Narasimha Naidu*, 16 M.L.J. 85=20 M. 42.

SUBRAHMANYA AYYAR, OFFIC. C. J. and SANKARAN NAIR, J.

(12) S. 13.—Suits by and against tenant both decided against him—Appeal from one of the decisions only whether barred under the section by reason of the unappealed decision—See *RES JUDICATA*, No. 4, 16 M.L.J. 68.

(18) S. 13.—*Res judicata in rent suits*.—*Incidental or collateral issues*.—*Adjudication upon title to the land in rent suits when res judicata in a subsequent title suit.*

Where, in a suit for rent, the defendant denies the relationship of landlord and tenant and either sets up the title of a third person to the land for which rent is claimed, or pleads that she is not in occupation of the land, or that the tenancy which existed has expired, the only material issue to be decided in the suit is, whether the relationship of landlord and tenant subsisted between the parties for the period covered by the suit, and the issue, if any, raised as to the title to the land is an incidental or collateral issue not necessary for the decision of the suit; therefore, the adjudication on this latter issue cannot operate as *res judicata* in a subsequent suit between the parties for the establishment of title to the land (a).

But where, in a rent suit, the alleged tenant denies the plaintiff's title to the land and sets up his own title to the same, the issue as to the title to the land becomes a substantial issue in the suit, and the decision of the Court on the question of title becomes *res judicata* in a subsequent suit between the parties for establishment of title to the land (b).

Where, in a suit brought by the plaintiff against the defendant for rent in respect of an alleged *jama* of Rs. 7, the defendant pleaded that he did not hold any separate *jama* of Rs. 7 under the plaintiff, but that the lands covered by the suit were included in a *jama* of Rs. 33 and odd which they held under the plaintiff and the Court held that the defendant did not hold any separate *jama* of Rs. 7 under the plaintiff and the lands of the alleged *jama* were included in the defendant's *jama* of Rs. 33 and odd ;

Civil Procedure Code (Act XIV of 1908).
—(Continued).

Held, that the decision that the lands were included within the defendant's *jama* of Rs. 38 and odd, was not necessary for the decision of the suit, and, consequently, could not be *res judicata* in a subsequent suit, brought by the plaintiff against the defendant for the declaration of his title to those lands and for *khas* possession thereof. **Sahadeb Dhall v. Ram Rudra Hal-dar**, 10 C. W. N. 820.

MITRA and ORMOND, JJ.

References.—(a) 24 C. 589, 11 C. 801 (F. C.), 8 C. W. N. 288=26 C. 498 (F. B.), R. (b) 21 W. R. 940, 15 C. 750, 25 C. 186, R.

(14) S. 13—*Res judicata*—First suit—Taking money—decree on mortgage—Second suit for realisation of money by sale of mortgaged property.

A mortgagee first sued for recovery of the mortgage-money by sale of the mortgaged property, but, at the hearing, took a simple money-decree by consent. Failing to realise the same, he sued for realisation of the amount by sale of the mortgaged property. *Held*, the present suit was barred by explanation 3, S. 13, C.P.C. **Shibu Bora v. Chandra Mohan Jana**, 88 C. 849.

MACLEAN, C. J. and GEDDIE, J.

References.—7 C. 78 and 7 C. 714, *Distd.*

(15) S. 13—*Res Judicata*—Decision erroneous in law over-ruled by a later decision.

The respondents, superior proprietors of a village, sued the appellants, *virt-holders* under a decree of the Settlement Court, according to which the appellants were bound to pay as rent to the respondents $\frac{3}{4}$ ths of the *nikasi* of the village. The respondents asserted that they were entitled to $\frac{3}{4}$ ths of the *nikasi* of each year, while the appellants contended that they were not bound to pay more than $\frac{3}{4}$ ths of the *nikasi* assumed by the Settlement Officer for the purpose of assessing Government Revenue, that is, $\frac{3}{4}$ ths of double the amount of Government Revenue. In a previous case between the parties, it was decided that the rent payable by the appellants depended upon the *nikasi* of each year and had not been fixed for the term of a settlement. The appellants contended that the decision was not binding upon them, first, because the point now in issue was not then definitely decided, and, secondly, because that decision was based on Rent Act

Civil Procedure Code (Act XIV of 1908).
—(Continued).

Buling No. 62, which was over-ruled by a later decision of the Judicial Commissioner's Court.

Held, that the previous decision operated as *res judicata*, and that a decision *inter partes*, if, in other respects, it fulfilled the requirements of S. 13 of the Code, could not be avoided by showing that it was erroneous in law (a). **Huddar v. Musammam Shahzada Khanam**, 9 O.C. 248 (B.).

CHAMIER and GRIFFIN, J.CS.

References.—(a) 32 C. 749, *Diss.*, 20 M. 104, 15 A. 827, Rent appeal No. 91 of 1900 and 5 O. C. 181, R.

(16) S. 13—Two suits decided by same judgment—Appeal in one suit if barred by decision in the other—See *RES JUDICATA*, No. 20, 10 C.W.N. 984.

(17) S. 13—*Res Judicata*—Erroneous opinion on a point of law how far conclusive.

An erroneous opinion on a point of law may be between the parties to it, but not further, a sufficient *res judicata* to preclude them from re-agitating it. **Waman Hari Deshpande v. Hari Withal Parulekar**, 8 Bom. L. R. 982.

RUSSELL, AG. C. J., and BEAMAN, J.

References.—8 Bom. L. R. 367 & 12 B. 411, *Expl.*, and discussed; 18 B. 280, R.

(18) Ss. 13 and 43—Dismissal of a previous suit for redemption of a mortgage—Subsequent suit for redemption of the same properties based on a different mortgage, whether barred.

A previous suit for redemption, brought on a mortgage of 1800 by the plaintiff's predecessor to the defendant's father, had been dismissed on the ground that the mortgage sued on was not true and the present suit was instituted for redemption of the same properties in respect of another mortgage of 1854. On a reference to the Full Bench of the question, whether the present suit was barred under S. 13 or 43, C.P.C. or under both, *held*, that it was not barred under either of the sections. **Madathil Raman v. Krishnan Nair**, 16 M.L.J. 46=20 M. 158 (F.B.).

WHITE, C. J., and SUBRAHMANYA AYYAR and DAVIES, JJ.

References.—26 M. 760, 27 M. 102, *Folld*, 22 M. 259, *overruled*.

(19) Ss. 13 & 43—Will—Probate—Revocation—Suit—*Res judicata*—Cause of action, Joinder of—Probate by consent.

Civil Procedure Code (Act XIV of 1908).
—(Continued).

A applied for grant of probate of a will. X entered a caveat on behalf of B, an infant. X subsequently withdrew the opposition, and, by consent, probate was granted to A. B attained majority, and alleging that the estate was being mis-administered, applied that the probate might either be revoked or jointly granted to her. The application was refused. B then applied for revocation of the probate on the ground that the will was a forgery and that probate had been obtained by fraud without any evidence.

Held, that assuming that S. 13 of the Code was applicable, the second application for revocation was not barred by constructive *Res judicata*, inasmuch as, it was not obligatory upon B to take the ground now urged, in her previous application. *Quære*: Whether an application for revocation of probate is a suit? **Khrodamoyi Barmani v. Bagala Sundari Barmani**, 4 C.L.J. 492.

RAMPINI & MOOKERJEE, JJ.

(20) S. 13, 103, 396—*Partition suit—Preliminary decree—Execution struck off for default—Fresh suit, if lies.*

A previous suit for partition brought by the plaintiffs having been compromised, an Amin was appointed to effect a partition in terms of the compromise. Subsequently the parties not appearing, the execution-proceedings then pending were dismissed for default.

Held—That a fresh suit for partition is not barred by S. 13 or S. 103 of the Code (a).

S. 109 has no application to execution-proceedings. **Madon Mohon Mondul v. Bikanta Nath Mondul**, 10 C.W.N. 839.

RAMPINI and GEHRT, JJ.

References.—(a) 13 A. 309 at p. 313, *N. & Bom. L.R.* 94, D.

(21) Ss. 13, 244, 278, 283—*Execution—Legal representative of judgment-debtor in possession as trustee—Objection—Defence raised in separate suit.*

Held, that though a legal representative of a judgment-debtor, who alleges that the property sought to be sold in execution was not the property of the judgment-debtor but was property possessed by the legal representative as trustee for others, may file an objection under section 278 of the Code, there is nothing to

Civil Procedure Code (Act XIV of 1908).
—(Continued).

compel the filing of such an objection and it is open to the legal representative to raise the defence in a subsequent suit brought by the auction purchaser for possession. **Rani Indomati v. Jageshar, A.W.N.** (1906), 158=8 A.L.J. 565=28 A. 644.

RICHARDS, J.

References.—12 A. 813, A.W.N. (1906), 157, R. (22) Ss. 13 and 244—See *RES JUDICATA*, No. 19, 4 C.L.J. 211.

(23) S. 13, explanation 2 and S. 43—*Res Judicata.*

H. S. maternal grand-father of the plaintiff and defendants, No. 1 and 2, owned a share in a village. On his death in 1877, the defendant No. 1 took possession of the property. In June, 1895, the plaintiff brought a suit for possession of one-third share in the property on the basis of a gift, alleged to have been made by H.S. in favour of himself and defendants Nos. 1 and 2. That suit was dismissed on the ground that the deed of gift was not registered and was inadmissible in evidence. In that suit, defendant No. 2 filed a written statement in which he said that he had no right whatever to any of the property which, he said, solely belonged to defendant No. 1. Subsequently the plaintiff brought a suit for his share by inheritance in the property and in view of the relinquishment by defendant No. 2, he claimed a half-share in the property.

Held, that the suit was not barred by S. 13 explanation 2, nor by S. 43 of the Code. **Mir Ibtisham Haider v. Mir Baqar Ali**, 9 O.C. 235.

GRIFFIN, J.C.

References.—7 N.W.P.H.C. Rep. 60 and 11 Bom. H.C. Rep. 224, B.

(24) S. 13, Exp. II—See *RES JUDICATA*, No. 13, 8 A.L.J. 541.

(25) S. 13, Expl. II—See *RES JUDICATA*, No. 24, 107 P.R. 1906.

S. 13—See I, 166-179 and 815-831; Act X of 1881 (N. W. P. Rent), No. 5; Act VIII of 1885 (Bengal Tenancy), No. 31; *Civ. Pro. Code*, Nos. 14-16, 18, 23, 29, 31-32 (a), 92, 170, 216 & 233; *Custom (Punjab)*, No. 33; *Decree*, No. 27; *Evidence Act*, No. 36; *Execution of Decree*, Nos. 59, 60 & 88;

Civil Procedure Code (Act XIV of 1882).
—(Continued).

Hindu Law (Reversioners), No. 17; Limitation Act, No. 78; Mortgage (Redemption), Nos. 14 & 26; Mahomedan Law (Will), No. 1; Prescription, No. 48; Rent, No. 8; Transfer of Property Act, No. 66.

Ss. 13, 248, 273—I, 171.

Ss. 13 and 387—I, 172.

Ss. 13, 43 & 45—I, 173.

Ss. 13 (Expl. II), 43 & 373—I, 174.

Ss. 13 & 244—I, 175.

Ss. 13 & 273—I, Res judicata, No. 17.

Ss. 13 & 373—I, 176.

Ss. 13 & 562—I, 177.

S. 13 (Exp. II)—I, 178.

S. 13 (Exp. III)—I, 179.

(20) *S. 16—Bombay Civil Courts Act (XIV of 1869), S. 22—Jurisdiction—Special Jurisdiction—First Class Subordinate Judge—Jurisdiction over lands valuing less than Rs. 5,000, situated outside his ordinary jurisdiction, but within his special jurisdiction.*

In execution of a decree lands belonging to plaintiff, which were situated in the Gadag Taluka and below Rs. 5,000 in value, were attached and sold by order of the First Class Subordinate Judge at Dharwar. The plaintiff then sued to set aside the sale and to recover possession of the lands. This suit was brought in the Court of the First Class Subordinate Judge at Dharwar. The defendant contended that, the land having been within the jurisdiction of the Gadag Court, and the defendants also having been residents of Gadag, the suit ought to have been instituted in the Gadag Court. It appeared that Gadag was within the ordinary jurisdiction of the Gadag Court: and that it was further under a special jurisdiction of the Court of the First Class Subordinate Judge at Dharwar, in suits of Rs. 5,000 and upwards.

Held, that the First Class Subordinate Judge at Dharwar had no jurisdiction given him by law to try any case relating to immovable property outside the local limits of his ordinary jurisdiction unless the value of the subject-matter was Rs. 5,000. **Shankerappa Irappa v. Kotrappa Channappa**, 8 Bom. L. R. 516.

BARRY, J.

S. 16—I, 180.

Civil Procedure Code (Act XIV of 1882).
—(Continued).

S. 16 (d)—I 180.

(27) *S. 17—Suit when the defendant resides out of jurisdiction—Leave of the Court.*

Where a suit is instituted in a Court within the local limits of jurisdiction of which the defendant does not reside, the leave of the Court mentioned in the proviso to S. 17 of the Civil Procedure Code, 1882, can be obtained even after the institution of the suit. **Narayan Shankar Rajwade v. The Secretary of State for India**, 8 Bom. L.R. 548=80 B. 570.

JENKINS, C.J. and BEAMAN, J.

(38) *S. 17—Jewels sent by post uninsured, suit on loss of, for damages for negligence of sender—Jurisdiction of Court—Cause of action—Contract Act, Ss. 131, 161—Bailee's liability—Estoppel—Evidence Act, S. 115.*

Plaintiff, a resident of L, sued for value of certain jewels which he had sent to defendant, a firm at C for repairs, asking the latter to send the jewels back, after repairs, per V. P. Post for the cost of the repairs. The defendant having effected the repairs, sent the jewels back per V. P. Post in an uninsured packet. On arrival at the Post office at L, plaintiff paid the amount due under the V. P. Packet and demanded the same; but it was found that it had, in the meantime, been lost. Hence the suit. Two points arose for decision: (1) whether the Court at L, had jurisdiction; (2) whether the defendant was liable to make the loss good as a bailee.

Held (1) that the Court at L had jurisdiction; because the plaintiff had to make payment of V. P. charges at the Post Office at L, in part performance of the contract between the parties, the Post Office at L having been constituted its agent by the defendant firm for the realization of the money from plaintiff; (2) that the mere despatch of the jewels uninsured could not fasten any liability on the defendant, especially seeing that it was usual for plaintiff in the course of dealings between himself and the defendant firm, on previous occasions, to send jewels uninsured; further, the despatch of jewels uninsured cannot be evidence of want of "such care" as a man of ordinary prudence would, under similar circumstances, take of his own goods within the meaning of S. 151 of the Contract Act.

Held, further, that the previous conduct of the plaintiff was such as to induce a belief in the defendant that despatch of jewels uninsured

Civil Procedure Code (Act XIV of 1908)

—(Continued).

was quite consistent with the amount of care which a bailee, in his position, ought to take of the goods bailed and that this estopped the plaintiff under S. 115 of the Evidence Act from raising the plea as to his negligence or want of care on the part of the defendant. *Boseck & Co. v. Mandlestan*, 70 P. R. 1906.

JOHNSTONE AND RATTIGAN, JJ.

(39) S. 17—See JURISDICTION (OF CIVIL COURT), No. 1, 29 M. 69.

(30) S. 17—See CUSTOM, No. 5, 7 Bom I. R. 821.

S. 17 (*Exps. II & III*)—I, 181.

(31) *Ss. 17 and 20—Jurisdiction—Court—Application—Acquiescence.*

A suit was brought in the Sirsi Court against three defendants, of whom one resided within the local limits of the jurisdiction of the Sirsi Court and the other two within that of the Barsi Court. The plaintiff did not obtain the leave of the Sirsi Court under S. 17. The Barsi defendants, in their written statement, took an objection that there was no jurisdiction; but they made no application under S. 20 of the Code. The case then proceeded to trial and was decided on its merits by the first Court. The lower appellate Court, on appeal, held that the Sirsi Court had no jurisdiction and it, therefore, ordered the plaint to be returned to the plaintiff for presentation in the proper Court; on second appeal, *held*, reversing the order of the lower appellate Court, that, as no application was made under S. 20, the Barsi defendants must be deemed to have acquiesced in the institution of the suit; and that, therefore, the suit could not be said to have been improperly instituted against those defendants in the Sirsi Court. *Ramappa Bhikappa v. Ganpat*, 7 Bom. L.R. 289—90 B. 81.

JENNINGS, C.J. and BATTY, J.

Ss. 17 (a), *Expl. III*, 20, 57 and 622—I, 182.
Ss. 17 and 57—I, *Contract Act*, No. 17.

(32) S. 18, *Compensation for wrong to moveables, suit for, courts which can entertain.*

1 This was suit for damages for wrongful seizure of two cargo boats of the plaintiff, alleged to be seized in Rangoon by order of a Magistrate of some other place, where all the defendants resided. The question to be decided was, whether, on the allegations in the plaint,

Civil Procedure Code (Act XIV of 1908)

—(Continued).

"the wrong was done" in Rangoon, so as to bring the suit within the jurisdiction of the Chief Court. *Held*, that, the seizure of the boats having been made at Rangoon, it was the place, where the "wrong was done", within the meaning of S. 19 of the Code and the Chief Court of Rangoon, consequently, was competent to entertain the suit. *May Myit v. Shwe Tha*, 3 L.B.R. 164.

IRWIN, J.

Reference:—6 B.L.R. 141, 2.

(33) S. 20—See No. 31, *supra*.

S. 20—I, *Civ. Pro. Code*, Nos. 88 & 89.

Ss. 20 & 211—I, 183.

S. 25—I, 184, 185.

(34) *Ss. 26, 31—Misjoinder of causes of action—"Cause of action," meaning of.*

The qualification implied in the words "in respect of the same cause of action" in S. 26, C. P. C. would be satisfied, if the facts which constituted the infringement of the right of the several plaintiffs were the same.

Where a suit for recovery of possession was brought by four plaintiffs jointly and it was stated that plaintiff No. 4 had purchased a ten-annas share of the properties from the other three plaintiffs:

Held, that the suit was not bad for misjoinder of causes of action. *Sundar Jha v. Bansman Jha*, 10 C. W. N. 508=88 C. 867.

HARRINGTON AND PRATT, JJ.

(35) *Ss. 26, 31, 32—Parties—Striking out names of parties—Power of Court.*

A suit was instituted, on a promissory note, by a Firm of Merchants and a person, who had obtained a transfer of the promissory note for, and on behalf of, the firm. The defendant objected to the suit having been instituted by the two plaintiffs and the Court struck out the latter of the two. The right to sue had vested in the Firm, but it was doubtful, when the suit was instituted, in which of the two plaintiffs the right to sue vested. *Held*, that the Court had no power, of its own motion, to strike out the name of one of the plaintiffs at that stage of the suit; the proper course would be to allow both the names to exist on the record and pass a decree, in favour of both or

Civil Procedure Code (Act XIV of 1908),
—(Continued).

either, as the Court may ultimately determine.
Nanak Chand v. Durant, G. E. R. 1908=19
P. L. R. 1906.

KENSINGTON and CURRY, JJ.

Ss. 26 & 32—I, 186.

Ss. 27, 28 and 33—I, Contract, No. 8.

(30) *Ss. 27 and 32—Suit brought by wrong person by mistake—Amendment—Suit of inconsistent nature, test of—Grant of letters of administration by suppression of will not appointing executors, if void ab initio—Sale by Administrator suppressing will, when void—"Shall remain trustee, i. e., guardian and next friends," if implies appointment of executors.*

S. 27 of the Code is applicable in cases where, by *bona fide* mistake, whether of law or fact, actions have been brought in the name of a wrong person (a).

A grant of letters of administration obtained by suppressing a will containing no appointment of executors is not void *ab initio* and a sale of a property of the deceased by the Administrator, who has obtained a grant of Administration under such circumstances, to a purchaser, who was ignorant of the suppression of the will, is valid, even where the grant is revoked after the sale (b).

The defence of purchase for valuable consideration without notice is available against a claim based on an equitable title, but not against one based on a legal title.

The will, in this case, contained the clause "On my demise G" son of P, or any full brother of G, that shall be born in equal shares, shall become the owner of the share or shares left by me and, until the said G attain majority, P and B, wife of P, shall remain trustees. i.e., guardians and next friends."

Held—that there was neither an express nor implied appointment of executors under that clause (c). **Gopal Das Agharwallah v. Budree Das Suresh**, 10 C.W.N. 602=38 C. 657.

WOODROFFE, J.

References.—(a) 20 M. 467 and 6 Ch. Div 82 (1877), R. (b) L. R. (1905) 1 Ch. 618, R. and 37 Ch. D. 420, F. (c) 20 M. 467, F.

(37) *S. 28—Misjoinder of parties—Agent of plaintiff impleaded along with the debtors on alternative claim.*

Civil Procedure Code (Act XIV of 1908),
—(Continued).

Suit for the recovery of money lent to the 1st defendant by plaintiff's agent, the 4th defendant. The latter was impleaded and relief against him prayed for in the alternative in respect of the sum in question as the first defendant denied the loan in *toto* prior to the suit. Agreeing with the contention on behalf of the appellant, *held*, that S. 28, C.P.C., warrants such alternative claims being made, the matter in respect of which the claim is made being the same within the meaning of the section (a). **Meyappa Chetty v. Periamann Chetty**, 16 M. L.J. 89=20 M. 50.

SUBRAHMANYA AYYAR, OFFIC. C.J. and BODDAM, J.

Reference.—(a) 27 M. 80, D.

S. 28—I, Misjoinder of causes of action, No. 2.

(38) *Ss. 28, 45—Same matter, meaning of:*

'Matter' in S. 28 of the Code means the subject-matter of the suit. So, where the subject-matter of the suit was a debt of a certain sum with the interest thereon due under a promissory note, a suit against the makers of it, along with a person who subsequently became surety for the payment of amount due on the note, was *held* to be not bad for multiplicity. **Maung Meik v. K. A. Meyappa Chetti**, 8 L. B. R. 191.

IRWIN, J.

Reference :—5 A. 103, R.

S. 30—I, 187.

(30) *Ss. 30, 539—Public religious trust—Right of members of a sect to worship—Infringement—Right of suit—Special damage—Representative suit by some members—Notice on others, how served—Advertisement—S. 30—Cir. Pro. Code, application of—*

The plaintiffs, who were members of the *Satchai* community in their village, purported to bring this suit under S. 30, on behalf of themselves and other members of that community for a declaration of their right to take part in the management of the worship of a goddess and for joint possession with the defendants of the land on which the worship was carried on. Notice of the suit was personally served on certain important members of the caste known to the plaintiff and by advertisement in newspaper on other

Civil Procedure Code (Act XIV of 1892).
—(Continued.)

Held—That the suit was properly instituted under S. 30, and the formalities prescribed by that section were sufficiently complied with.

Per RAMPINI, J.—S. 589, Civ. Pro. Code, did not apply as the suit was not instituted on behalf of the general public, the members of the *Satchasi* community being a small and easily determinable body.

Per WOODROFFE, J.—This was a case of public religious trust, though not a trust for the public at large, but only for a portion answering a particular description (a).

S. 30, Civ. Pro. Code deals with procedure only and does not affect substantive rights of suit.

Where the right to sue exists, it is open in cases of this nature for two persons to sue with permission under S. 589, or for one or more to sue on behalf of the rest with permission under S. 30 or for all interested to join in suing (b).

In the case of an infringement of a right of the general public, no suit can be brought under S. 30 or at all, unless on proof of special damage in which case either one person sues in respect of the infringement of his individual right and the section does not apply, or if he should sue on behalf of others, similarly specially injured, he sues on their behalf, and not on behalf of the general public (c).

S. 30 should not, in its application, be limited to cases where the parties though numerous can be definitely ascertained. A suit may be instituted under this section, on behalf of a defined class of the general public though that class may, as in this case, be composed of a more or less indefinite number of persons (d). **Monmotha Nath Das v. Harish Chandra Das**, 10 C. W. N. 867 = 38 C. 905.

RAMPINI and WOODROFFE, JJ.

References.—(a) 7 A. 182, R. (b) 10 C.W.N. 581, R. (c) 9 M. 463, *Appr.* (d) 20 C. 397, D. and *disapproved*.

Ss. 30, 539—I, 187.

(40) S. 31—See Nos. 34 and 35, *supra*.

(41) S. 32—See No. 35, *supra*.

(42) S. 32—*Joinder of parties*—Court adding a new defendant proprio motu—*Plea of limitation*.

Where a party is joined to a suit, by the order of the Court, by its own motion, under S. 32 of the Code, it is open to such party to raise

Civil Procedure Code (Act XIV of 1892).
—(Continued.)

in defence the plea of limitation. **Damodar Vithoba v. Nainsukh Bajmal**, 8 Bom. L.R. 942.

ASTON and HEATON, JJ.

S. 32—I, 188, 189 and 190.

(43) S. 34—*Objection as to non-joinder of parties, time for the taking of*—The objection cannot be raised for the first time in appeal.

Plaintiff, describing himself as a *lambarda* of a village, sued to eject the defendants from certain lands, upon which he alleged them to have trespassed. No objection was taken to the suit, in the first Court, on the ground that the plaintiff was not the only *Malguzar*, and the only main issue, whether the alleged tenancy existed, was decided in plaintiff's favour. On appeal, the defendant contended that the suit was not maintainable, inasmuch as the plaintiff did not purport to sue as representative of the entire proprietary body; and the District Judge accepted the contention as sound.

On second appeal, it was urged that the objection for want of parties must be deemed to have been waived by the defendant, the same not having been raised at the earliest possible opportunity, as required by S. 34 of the Code; also that the entire body of the landlords need not be represented on the record, where one of them seeks to eject an alleged trespasser.

With regard to the first contention *held*, that the objection for want of parties must be taken in all cases before the first hearing; otherwise it must be deemed to have been waived by the defendant (a).

As to the second point, *held*, that one member of a proprietary body is, as against every person but his co-proprietors, entitled to the possession of every part of the common lands. In such a case, one of the members suing a mere trespasser without joining the others as plaintiff's should be given at least a decree for joint possession with the defendants to the extent of the plaintiff's share in the property, even when the defendant had taken the objection as to non-joinder of the other members in proper time (b). **Daryao Shah Gond v. Tiran Shah Gond**, 2 N.L.R. 45.

DRAKE-BROCKMAN, A.J.C.

References.—(a) 14 M. 498 and 7 C. 594, F. (b) 15 C. 47 and 19 C. 541, F.

Civil Procedure Code (Act XIV of 1882).
—(Continued).

(44) S. 84—Waiver of objection to want of parties—See **TRANSFER OF PROPERTY ACT**, No. 21, 8 A.L.J. 474.

(45) Ss. 86, 87, 89 and 652—Right of one pleader to hold the brief of another and plead in Court—See **PRACTICE (MISCELLANEOUS CASES)**, No. 1, 9 O.C. 65.

(46) S. 37—'not resident,' meaning of—
The words 'not resident,' in S. 37 of the Code signify a person who is not at the time, when some act is done by his agent, present within the jurisdiction of the Court. **Damodar Das v. Inayat Hussain**, 2 A.L.J. 626 = A.W.N. (1905), 221 = 28 A. 135.

KNOX, J.

Reference.—6 B. 100, F.

(47) S. 87—See No. 45, *supra*.

(48) S. 39—See No. 45, *supra*.

Ss. 42, 43, 44—I, 190.

(49) S. 43—Mortgages—Different suits on one mortgage only—**Transfer of Property Act**, S. 85.

It is not competent to a holder of two mortgages, on the same property from the same person, to maintain a suit, on the latter only for sale of the property subject to the prior mortgage. **Keshayram Dulvaram v. Ranchhod Fakira**, 7 Bom. L.R. 811 = 30 B. 156.

RUSSELL and ASTON, JJ.

References.—25 M. 108 at p. 116; 13 A. 492, 25 B. 161 = 2 Bom. L.R. 864, 29 I.A. 118, *Refd. to*.

(50) S. 43—Mesne profits due at date of suit for possession, separate suit for—Omission of claim for mesne profits in suit for possession—

When a plaintiff at date of his suit for possession is entitled to mesne profits, he must claim them in the same suit; a separate suit for those profits is barred under the provisions of S. 43 of the Code. **Shahamat Hussain v. Murl Prasad**, 9 O. C. 224.

CHAMBER and EVANS, J. CS.

References.—19 C. 615, *not F.*, 11 M. 151 and 17 A. 583, R.

(51) S. 43—Splitting of cause of action—Bond payable by instalments—Suit for all instalments due.

Civil Procedure Code (Act XIV of 1882).
—(Continued).

In a suit to recover money due on an instalment bond, the plaintiff sued to recover the amount of one instalment only, although by that time two instalments had accrued due. He then brought a second suit to recover the amount of the second instalment:

Held, that the second suit was barred by S. 43 of the Code, 1882. **Narayan Kashiv v. Nimba Hari Shimpi**, 8 Bom. L.R. 547.

JENKINS, C.J. and BEAMAN, J.

(52) S. 43—See Nos. 18, 19, 23, *supra*.

S. 43—I, 191—195.

(53) Ss. 43 & 44—Possession, suit for, subsequent to suit for mesne profits—Suit for profits when plaintiff entitled to possession also, effect of—Subsequent suit for mesne profits barred.

Held, that having regard to the provisions of Ss. 43 and 44 of the Code, a person having once sued for mesne profits with respect to land, for which he was then entitled to possession; cannot subsequently sue for possession of the same. **Shoo Ratan Misra v. Ram Dhani**, 9 O. C. 322.

EVANS, J. C.

References.—19 C. 615, 17 A. 583, 9 O. C. 225 & 3 A. 857, R.

(54) Ss. 43 and 45—Misjoinder of causes of action—Reversioner's suit for declaration against validity of transfer made by Hindu widow by separate deeds in favor of different persons—Transferees under separate deeds of different dates executed by widow, cause of action against—

Certain reversioners sued for a declaration that certain alienations made by two Hindu widows P. and M. were executed without legal necessity and were inoperative after their death. The deeds (1) and (2), dated 8th October, 1894 and (3) of 1st October, 1899 were executed by the two widows in favor of S, and the deed (4) of the 7th July, 1904 was executed by P only in favor of R.

Held, that having regard to the provisions of Ss. 43 and 45 of the Code, the suit was bad so far that the cause of action with respect to the first 3 deeds should not have been joined with the cause of action with respect to the last deed (4) in one suit; and that the proper course was to allow the plaintiffs to make their election,

Civil Procedure Code (Act XIV of 1908).

—(Continued).

which suit they would pursue without prejudice to their rights to bring fresh suit against the other defendant separately (a). *Shree Ratan v. Ghislawan*, 9 O. C. 320.

EVANS, J.C.

Reference :—7 B. 280, and 16 A. 279, and P. R. 1 of 1905, *R.*

Ss. 43 & 473—I, 194.

Ss. 43 & 473—I, 195.

(54-a) S. 44—See No. 53, *supra*.

(55) *Ss. 44 and 45—suit to enforce mortgage—Necessary parties to such suit—Multifariousness.*

A suit to enforce a mortgage, in which the adverse claims of persons, not privy to the mortgage and setting up a title paramount to that of the mortgagor and mortgagee, are sought to be investigated, is open to objection on the ground of misjoinder and multifariousness under Ss. 44 and 45 of the Code (a). *Jajneswar Dutt v. Shuban Mohan Mitra*, 8 C. L. J. 205=88 C. 425.

RAMPINI and MOOKERJEE, JJ.

Reference.—(a) 2 C.L.J. 802. *Refd. to.*

(56) *Ss. 44 and 45—Suit for declaration of title and cancellation of sale-deeds—Misjoinder of causes of action.*

When the plaintiff sued for a declaration of his title to certain immovable property and also for the cancelment of two sale deeds affecting the same property, it was held that there was no misjoinder of causes of action. *Nisar Husain v. Nisar Ali*, A.W.N. (1906), 54=3 A.L.J. 128.

BANERJI and RICHARDS, JJ.

References.—5 M. 161; 17 A. 274 and 25 A. 229, *Refd. to.*

(57) *S. 44, rule (b)—Executors, administrators and heirs as such—Jagtees and next-of-kin, points of difference between—Misjoinder of causes of action.*

Those, to whom rule (b) of S. 44 of the Code relates, have the common characteristic that they owe their legal condition to the death of another. But there are others of whom this can be predicated, as for instance, legatrees or next-of-kin, and yet they are not named in rule (b). But the common characteristic of executors, administrators and heirs, which is not shared by legatrees and next-of-kin, is that the

Civil Procedure Code (Act XIV of 1908).

—(Continued).

former not only acquire title from the deceased but they may represent him. In this is to be found the clue to the meaning of the rule.

Thus, a claim may be made by, or against, the heir of a deceased Hindu as his representative, and again the same person may claim for his own benefit and in his own personal right property of which the beneficial ownership has devolved on him by inheritance from, that is to say as heir to, this deceased Hindu. His legal capacity in the two cases is absolutely distinct and it is only in reference to his representative capacity that it can be said a claim has been made by or against an heir as such (a). *Hafizaboo v. Mahomed Casam Moorad*, 8 Bom. L.R. 784.

JENKINS, C. J., and BRIDMAN, J.

Reference :—(a) 6 B. 300, *disapproved*.

(58) *S. 45, application of, to N.W.P. Tenancy Act—Suit for rent—Separate holdings—Joint suit not maintainable.*

S. 45 of the Code does not apply to suits for rent. A landlord cannot bring a joint suit for rent of several holdings, both occupancy and non-occupancy. The N.W.P. Tenancy Act contemplates separate suit for arrears of rent in respect of separate holdings. *Jagannath Prasad v. Tore*, 3 A.L.J. 610=A.W.N. (1906), 258.

BENNERJI and RICHARDS, JJ.

(59) *S. 45—Suit for rent of agricultural holding and fishery rents—Joinder of the causes of action, legality of, under S. 45—Suit for fishery rents entertainable in ordinary Civil Courts.*

These suits were instituted by the same plaintiffs against different defendants, for recovery of consolidated sums of money made up of the rents of the agricultural lands held by the defendants and the amounts contracted to be paid by them on account of fishery.

The Munsiff decided wholly in favour of the plaintiffs but, on appeal, the District Judge held that the suit was not maintainable so far as it related to the fishery which was unconnected with the agricultural holdings and gave decrees for agricultural rents only. Held, since by contract the rents were consolidated, the tenants agreeing to pay sums so consolidated, the causes of action for both the rents were not different; but even assuming that

Civil Procedure Code (Act XIV of 1908).
—(Continued)—

the claims were based on different causes of action, plaintiffs were entitled to decree for the entire amount claimed, since the claims were such as could be joined together in one and the same suit in accordance with the provisions of S. 45 of the Code and the District Judge was, therefore, wrong in having held that the suits, so far as related to the rents of the fishery, were not maintainable.

On the objection urged for the respondents that the claim for fishery rent was not entertainable in the Court of the Munsiff but only in a Court of Small Causes, *held*, that a suit for recovery of rent other than house rent, is not cognizable by Small Cause Courts and there is nothing in the definition of the word 'rent' in the Bengal Tenancy Act which excludes fishery rent. **Ship Prosad Chaudhuri v. Yaki Pal**, 88 C. 601.

MITRA and ORMOND, JJ.

(60) S. 45—See Nos. 38, 54, 55 and 56, *supra*.
S. 45—I, *Misjoinder of Causes of Action*, No. 2.

Ss. 45 and 46—I, 195.

(61) S. 48—A suit is commenced by the presentation of the plaint—See WILL, No. 5, 1 M.L.T. 71.

Ss. 48, 54—I, 196.

*(61-a) S. 52—See No. 36, *supra*.

(62) S. 53.

Having regard to the proviso of S. 53 of the Code, an amendment of the plaint, a year or more after the institution of the suit and inconsistent with the original claim, is improper and should not be allowed. **Shyama Charan Nundy v. Akhiram Goswami**, 8 C.L.J. 306=10 C.W. N. 738=38 C. 511.

MACLEAN, C.J. and GEIDT, J.

(63) S. 53—*Plaint in a suit for injunction, whether could be amended into one for possession—Alteration in the relief prayed for, whether alters character of suit.*

Plaintiffs sued for an injunction restraining the defendant from interfering with their dealings in respect of certain property of theirs, of which the defendant had taken wrongful possession. On the defendants' pleading title to the property, plaintiffs prayed for amendment of their claim by claiming possession and damages.

Civil Procedure Code (Act XIV of 1908).

Held, that a suit for a declaration cannot be regarded as inconsistent with one for possession (a) and that an alteration in the relief prayed for, would not alter the character of the suit, so as to prevent an amendment of a plaint in that respect (b). **Harji Mal v. Pothar Das**, 185 P. R. 1906.

RMD, C.J.

References:—(a) 11 M. 285 & 15 M. 15, F. (b) 20 C. 805 & 26 C. 845, F. 1 P.R. 1900 & 161 P.R. 1898, R.

S. 53 (b)—I, 197.

Ss. 53, 582, 587—I, 197.

S. 54—I, *Court Fees Act*, No. 9.
I, 198.

Ss. 54 and 117—I, 199.

(64) Ss. 54, 582, 584—second appeal—*effect of application for admission—Jurisdiction of single judge of the High Court.*

A memorandum of appeal, in a second appeal, was presented to a single Judge of the High Court. He first directed that the record should be sent for at the expense of the applicant, and, on a subsequent date, made an order purporting to "dismiss" the appeal. Notice had not been issued to the respondent. *Held*, that the order was in reality an order rejecting an application for the admission of the appeal, and as such was within the jurisdiction of a single Judge (a). **Willayat Begam v. Ram Lal**, A. W. N. (1906), 68.

STANLEY, C. J. and BURKITT, J.

Reference.—(a) A.W.N. (1893), 115, *Refd. to*.

(65) S. 54—Suit filed on last day of limitation on insufficient Court-fee—the insufficiency not discovered until after expiry of limitation for the suit—Suit held barred—See COURT-FEES ACT, No. 14, A.W.N. (1906), 21.

(66) S. 54, cl. (b)—*Plaint, admission, registration and rejection of.*

It is competent to a Court to reject a plaint under S. 54, cl. (b), of the Civ. Pro. Code after it has been admitted and duly registered.

A plaint was presented on the 28rd June, 1902, insufficiently stamped. The plaintiffs were directed by the Court to pay the deficit Court fees on or before the 5th July; the Court fees were supplied on the 8th July. No prayer was made for extension of time, nor was an order made in that behalf; but

Civil Procedure Code (Act XIV of 1882).
—(Continued).

the plaint was directed to be admitted and registered. At the final hearing, the plaint was rejected upon objection taken by the defendant that the deficit Court fees had not been paid within the time allowed.

Held, that the plaint ought not to have been rejected, but the Court ought to have proceeded with the suit, as if it had been instituted on the date the deficit Court fees were actually paid, dismissing such portion of the claim, if any, as might, in this view, be barred by limitation. **Pudmanand Singh v. Anant Lal Misser**, 4 C. L. J. 421 (F.B.) = 11 C.W.N. 38 = 1 M. L. T. 355.

MACLEAN, C.J., GHOSE, RAMPINI, GEIDT and HOLMWOOD, JJ.

S. 57—I, Contract Act, No. 17.

(67) Ss. 73, 75 & 82—*Summons, substituted service of, when could be ordered.*

Whenever practicable the service of summons ought to be made by delivering or tendering a copy of it to the defendant in person (Ss. 73 and 75 of the Code), and it is only when reasonable grounds exist for believing that the defendant is keeping out of the way to avoid service or that for other reasons it cannot be served in the ordinary way that substituted service should be ordered (S. 82 of the Code). Temporary absence by itself will not justify resort to such service (a). **Abraham Pillai v. Donald Smith**, 29 M. 324.

SANKARAN NAIR, J.

References.—(a) 21 M. 419, F., 21 M. 325, *Distd.*

(68) S. 75—See No. 67, *supra*.

(69) Ss. 79, 80—*Service of summons—Signature or mark on summons—Practice of the Presidency Small Cause Court at Bombay.*

The service of summons on a person, through the Presidency Small Cause Court of Bombay, was held not proper when no signature or mark of his was fixed on the original copy of the summons, on the ground that he could not write. **Malji Kashi v. Ambli Chima**, 8 Bom. L. R. 584.

SIR LAWRENCE JENKINS, C. J. and BEAMAN, J.

(70) S. 80—See No. 69, *supra*.

(71) S. 80—*Service of summons—Practice,*

Civil Procedure Code (Act XIV of 1882).
—(Continued).

Where there is merely a statement that the respondent cannot be found, but it does not appear that any effort was made to find him, the serving officer is not entitled to affix a copy of the summons on the outer door of the house in which the respondent ordinarily resided, as provided by S. 80 of the Code. **Sakharam Bhaskar Bapat v. Padmakar Mahadev Bhat**, 8 Bom. L.R. 757 = 30 B. 623.

JENKINS, C.J. and BEAMAN, J.

References :—26 C. 101 and 24 A. 302, R.

Ss. 80, 82—I, Civil Pro. Code, No. 199,

(72) S. 82—See No. 67, *supra*.

Ss. 82 & 174—I, Penal Code, No. 1.

S. 99 A—I, 75.

S. 102—I, 200; and Transfer of Property Act, No. 68.

(73) Ss. 102 and 103, applicability of, to a reference under S. 18 of the Land Acquisition Act—See ACT I OF 1894 (LAND ACQUISITION), No. 11, 10 C.W.N. 991.

Ss. 102 and 157—I, 200.

(74) S. 103—See Nos. 20 and 73, *supra*.

(75) S. 103—*Partition—Joint property—first suit dismissed for default—Second suit, maintainability of—*

The right to enforce a partition is a legal incident of a joint tenancy, and, so long as such tenancy subsists, any of the joint tenants may apply to the Court for partition of the joint property (a).

Held, therefore, where the first suit for partition was dismissed for default of appearance, a second suit for the same relief would lie. **Bisheshwar Das v. Ram Parshad**, 3 A.L.J. 379 = A.W.N. (1906), 142 = 28 A.627.

STANLEY, C.J. and KNOX, J.

Reference.—(a) 13 A. 309, R.

See, also I, 301.

See I, Mortgage (Redemption), No. 2 and Act II of 1901 (N.W.P. Tenancy), No. 12.

S. 106—See I, Res Judicata, No. 37.

(76) S. 108—*Decree on an alleged compromise repudiated by defendants, whether ex parte.*

Where a Court finds that an alleged compromise, on which the decree was based, was not actually entered into by the defendants, that the defendants were not duly served with sum-

Civil Procedure Code (Act XIV of 1882).
—(Continued).

monses and were not present or represented at the trial, it is justified in holding the decree so made as an *ex parte* decree and that the defendants are entitled to apply under S. 108: **Bholal Naskar v. Alach Naskar**, 8 C. L. J. 158.

MACLEAN, C. J. and BANERJI, J.

(77) S. 108—*Jurisdiction to enquire into subsequent fraud—Setting aside decree partially.*

*Where an *ex parte* decree is found to have been obtained without service of summons, and the record shows that it has been subsequently assented to, but the genuineness of such assent is disputed by the defendant, the Court has jurisdiction to investigate whether, in fact, there was any assent in order to enable it to decide whether any order ought to be made under S. 108 for setting aside the decree.

When a decree, passed *ex parte* against several defendants, is set aside and the case revived at the instance of one of them, under S. 108, the order does not necessarily revive the whole suit to the benefit of the other defendants, whose prayer under the section has been heard and rejected. **Kunja Behari Ghose v. Durgamoni Dassi**, 8 C.L.J. 160.

RAMPINI and MOOKERJEE, JJ.

Reference.—25 C. 155, D.

(77-a) S. 108—See ACT XV OF 1882 (PRESIDENCY SMALL CAUSE COURTS), No. 1, 8 C. L. J. 199 and No. 3, *supra*.

(78) S. 108—*application to set aside ex parte decree under S. 90 of the Transfer of Property Act.*

An application made under S. 108 of the Code to set aside an *ex parte* decree passed under S. 90 of the Transfer of Property Act is not maintainable. **Gurdin Pandey v. Rai Gokul Chand Bahadur**, 9 O. C. 288.

GRIFFIN, J. C.

Reference:—15 A. 84, R.

S. 108—I, Transfer of Pro. Act, No. 56.

Ss. 108, 294, 368—I, 201.

Ss. 108, 248—I, 202.

(79) Ss. 108, 552, 562, 564, 588, 640—*Ex-parte decree—Power of appellate Court to remand suit for re-hearing on grounds other than those specified in S. 562.*

Civil Procedure Code (Act XIX of 1882).
—(Continued).

When a suit is decided *ex parte*, an appellate Court has jurisdiction, in an appeal against the decree so passed, to reverse the decree of the Court of first instance, on the ground that the First Court was wrong in proceeding to decide the suit *ex parte*, and to remand the suit for re-hearing, such order of remand not being passed under S. 562 or for any of the reasons mentioned therein.

Per WHITE, C.J.—There is a power to remand a case when the appellate Court reverses an order refusing to set aside an *ex parte* decree, and it seems anomalous to hold that there is no such power when the appellate Court allows an appeal against a decree upon the ground that there ought not to have been an *ex parte* decree. **Sadhu Krishna Aiyar v. Kuppan Iyengar**, 1 M.L.T. 268. (F&B)=16 M.L.J. 479.

WHITE, C.J. & SUBRAHMANYA AYYAR & BENSON, JJ.

References:—23 M. 445, 23 A. 167, F; 17 B. 733, 23 M. 260, *not followed*; 23 C. 788, 23 M. 447, 24 M. 437 & 12 A. 510, R.

(80) Ss. 108, 258, 588 and 623—*Application to certify an alleged adjustment of decree—Appeal—Review of judgment.*

A judgment-debtor made an application under S. 258 of the Code, asking the Court to issue notice to the decree-holder to show cause why an alleged adjustment of the decree should not be recorded as certified. This application was granted. Thereupon, the decree-holder made an application under S. 108 of the Code to have the order set aside. The Court rejected this application, refusing also to treat it as an application for review under S. 623 of the Code. Against this order, the decree-holder appealed, under S. 588 (b) of the Code, as from an order under S. 108, and also took a plea to the effect, that the Court below ought to have treated his application as one under S. 623 and to have disposed of it as such. The lower appellate Court held that there was no valid ground for interfering with the order on the application under S. 108, but went on to direct that the application should be restored to the file of the Court below and disposed of as an application for review of judgment. Held, on appeal from this order by the judgment-debtor, that an appeal lay to the High Court. But if not, the Court was justified in treating the memorandum of appeal as an application in revision, in-

Civil Procedure Code (Act XIV of 1908).

—(Continued).

as much as the order of the Court below was passed without jurisdiction. *Randa v. Ramji Lal*, A.W.N. (1906), 58 = 8 A.L.J. 119.

BANNERJ and RICHARDS, JJ.

(81) *Ss. 108, 588 (9) and 647*—*Ex parte order under S. 280, order refusing to set aside an, whether appealable under S. 588 (9).*

S. 588 (9) of the Code applied only to what is expressly mentioned therein, namely, orders, rejecting applications, under S. 108, for an order to set aside a decree *ex parte*. The applicant in this case had not made an application to set aside a decree. What had been passed against him was an order under S. 280, which is not a decree, because, though, the procedure prescribed with respect to decrees in S. 108 of the Code has been extended by S. 647 to orders passed *ex parte*, that section cannot, in any way, operate so as to allow an appeal under S. 588 (9), in which only decrees are mentioned and not orders nor any reference made to S. 647. *Lu Behn v. Po Sein*, 3 L.B.R. 203 (F.B.).

FOX, C.J. and IRWIN and HARTNOLL, JJ.

References:—16 C. 81, *Diss.* 11 M. 26, R.

Ss. 108 and 591—*I, Appeal (Civil), No. 1.*

(82) *Ss. 108, 622*—*Re-opening a suit without enquiry, a material irregularity within S. 622.*

In this case the Court of first instance, in the matter of an application of the respondent to get an *ex parte* decree set aside, sent notice to the parties and forthwith set aside the *ex parte* decree, and proceeded to try the regular suit, *Held*, on revision, that the Court, by re-opening the regular case, as it did, without making enquiry and satisfying itself on the points specified in S. 108, acted illegally or with material irregularity, within the meaning of S. 622 of the Code. The necessity of notice to the opposite party shows that the Legislature intended that the opposite party should have the opportunity of opposing the application and the Court in having re-opened the case, immediately after giving notice and without making any enquiry at all, failed to carry out the intention of the Legislature and acted in a manner in which S. 108 did not authorise it to act. *Nga Tha Din, Mi Tin v. Nga Po Chinn*, U. B. R. (1906), Civ. Pro. Code, 42.

SHAW, J.C.

Reference:—U. B. R. (1904-05) Civ. Pro. p. 26, B.

Civil Procedure Code (Act XIV of 1908).

—(Continued).

(83) *Ss. 108, 622, 627*—*Review—Application by representatives of a deceased party for review of ex parte decree against the latter—Appeal against order admitting application for review.*

L, father of the respondents, obtained a decree against the appellant for partition of a half share in certain immovable property. The appellant objected, under S. 244 of the Code, to a portion of the property decreed and his application was granted *ex parte* by the Subordinate Judge on the 12th Sep., 1906. L seems to have been ill at the time and died soon afterwards. On the 12th December, his sons asked for a review of the *ex parte* order. The Subordinate Judge granted the review, and restored the original decree. The District Judge maintained this order.

Held, that, notwithstanding S. 108, the terms of S. 622 were sufficiently "wide to admit of an application being made by the representatives of a deceased party, who would be materially affected by the decree; and that, having regard to provisions of S. 629, no appeal lay against the order admitting the application for review except on the question of limitation. *Debi Dass v. Narian Pershad*, 9 O. C. 85.

WELLS, J. C.

(84) *Ss. 108, 647*—*Presidency Small Cause Courts Act, Chapter VII—Ex parte order—Power of Small Cause Court to set aside the order.*

The Court of Small Causes at Bombay has inherent power to deal with an application to set aside an order made *ex parte* and to set it aside upon a proper cause being substantiated. *Tyeb Beg Mahomed v. Ali Bhat Mangalji*, 8 Bom. L. R. 808.

JENKINS, C. J. & BRAMAN, J.

Reference:—32 C. 258 (F.B.) = 9 C. W. N. 81, F.

(85) *S. 111*—*Court fees—Set-off claimed in a written statement.*

Where, in a suit for rent, the question was as to whether defendant was entitled to claim a deduction on account of payment made by him for cesses payable by the plaintiff on account of years previous to those for which rent was claimed.

Held, that the payment cannot be treated as part-payment of the rents sued for, but as an

Civil Procedure Code (Act XIV of 1908).
—(Continued).

antecedent debt. The claim was, therefore, in the nature of a set-off and Court-fees must be paid for the same (a). *Guise J.J. v. Anantha Ram Nathal*, 10 C. W. N. 190.

• PRATT AND PARCITTES, JJ.

Reference.—(a) Dictum of Banerji, J., in S C.W.N. 174, *not P.*

(86) S. 111—Set-off—“Legally recoverable”
• —Company—Liquidation—Director—Companies’ Act (VI of 1882), S. 214.

The words ‘legally recoverable,’ in S. 111 of the Civ. Pro. Code of 1882, have no reference to the ability of the debtor to pay the demand in full; and a sum is legally recoverable though, in the result, the creditor must be satisfied with a dividend. In an action by a Company to recover a sum fraudulently obtained by the defendants, before the liquidation of the Company, one of the defendants claimed to set off, against the Company, a debt from the Company due to him, incurred prior to the commencement of the winding up.

Held, that the defendant could set off the debt due to him, though the amounts of the debts were ascertained after the liquidation, as the debts which were sought to be set off, one against the other, were debts between the same parties, and in the same interest, and neither resulted from a dealing with the liquidator (a).

A Director can set off a debt due to him from the Company, in an action brought against him by the Company, though he cannot set off a debt due to him against a claim made by a liquidator under S. 214 of the Indian Companies Act. *The Ahmedabad Advance S. & W. Co., Ltd. v. Luxmishanker Dewshanker*, 7 Bom. L.R. 246=80 B. 178,

JENKINS, C. J. and BATTY, J.

Reference.—(a) (1882) 8 Q.B.D. 179, *Distd.*

(87) S. 112—Presentation of statement expressing inability to put in the debated statement ordered, whether S’ failure to present’ within S. 113—Taxation of costs on appeal—Court-fees Act, S. 18, applicability of—

• Where the plaintiffs in a case, who were directed by the Court to put in further written statement under S. 112, C.P.C., filed a statement as to their inability to supply the particulars called for by the Court. *Held*, the order having been practically complied with by the plaintiffs, so far as their information permitted,

Civil Procedure Code (Act XIV of 1908).
—(Continued).

they could not be regarded as having ‘failed to present’ a statement within S. 112 of the Code, so as to enable the Court to proceed under that section.

In acting under S. 112, the Court may pass a decree, if the circumstances admit of any decree being passed; but an order merely dismissing a suit under the section, without any adjudication upon any right claimed or defence set up is not a decree; and an appeal from such an order is to be treated as an appeal under S. 588, C.P.C., and so, where the order having been in terms of a decree, appellant had paid the full Court-fee on his appeal therefrom, *held*, that S. 18 of the Court Fees Act must be held to apply to the case and the stamp duty paid by the appellant should be refunded to him.

Orr v. Nagappa Chetty, 16 M.L.J. 80.

SUBRAHMANYA AYYAR and BODDAM, JJ.

Reference.—22 M. 221, *Refd. to.*

S. 118—1, 203.

Ss. 126, 127, 136—I, 203.

S. 130—I, 204.

S. 136—I, 204.

(88) S. 158—Mere default of party to attend Court in person—Court not to pass decrees against him under S. 158 but to proceed under S. 175.

S. 158 of the Code is applicable only to cases where any party to a suit, to whom time has been granted, fails to do certain specified acts for which time has been allowed (a). It contemplates cases where the parties have expressly obtained time to produce evidence and does not refer to adjournments by the Court, in the ordinary course, of its own motion (b). So, where a defendant required to attend Court in person failed to be present on the date of the hearing, the only course open to the Court was *held* to be to proceed under S. 157. In the absence of anything to show that the defendant had expressly asked for time and then made a default, the Court could not pass an order to decide the case forthwith under S. 158 of the Code. *Panna Lal v. Bull*, 80 P. R. 1906=82 P.L.R. 1906.

LAL CHAND, J.

References.—(a) 80 P.R. 1889, R. (b) 189 P.R. 1884, R.

(89) S. 158 A holiday fixed for hearing of a case to suit plaintiff’s plea—Refusal of

**Civil Procedure Code (Act XIV of
—(Continued).**

*pleader to appear on that day—Right of
Court to proceed under S. 158.*

Where a gazetted holiday was fixed for hearing arguments in a case, by arrangement with the parties and so as to suit the convenience of the plaintiff's pleader, but the latter declined to appear on that day, it was *held* that neither side having objected when the said date was fixed, it was their duty to be present on such day and, in default of their so appearing, the proper course for the Court was to proceed to judgment in terms of S. 158, Civ. Pro. Code. **Bhagwan Das v. Har Pershad**, 111 P. R. 1906.

KENSINGTON & CHITTY, JJ.

References:—55 P. R. 1898 & 82 P. R. 1901, R.

S. 174—I, *Penal Code*, No. 1. .

(90) S. 175—The section does not apply in the case of appeals, under cl. 15 of the Letters Patent, from judgments of the High Court in the exercise of its original jurisdiction—See **HINDU LAW (TRUSTS)**, No. 1, 29 M. 1.

S. 189—I, 205.

(91) S. 198—*Judgment, pronouncement of, in open Court—Failure to pronounce—Irregularity—Practice.*

The provisions of S. 198 of the Civil Procedure Code, 1882, regarding the pronouncement of judgment in open Court should be strictly observed. Apart from the fact that the failure to do so is in direct opposition to an express provision of the law, the practice is highly inconvenient, and deprives the Court and the litigants of a valuable safeguard against error.

Per JENKINS, C.J.—“I strongly disapprove of any failure to observe the provision of S. 198 of the Civil Procedure Code; and I desire to express my disapproval, because it has been represented to us that it is not an uncommon practice in the mofussil Courts to omit to pronounce judgment in open Court If the practice exists, I trust it will cease and that judgments will always be pronounced, as the law requires, in open Court; and that pleaders will attend when judgment is pronounced and assist the Court by pointing out any error that may occur.” **Bai Dahl v. Hargovandas**, 8 Bom. L.R. 229=30 B. 455.

JENKINS, C. J. and RUSSELL, J.

Ss. 198 and 578—I, 206.

S. 202—I, *Small Cause Suit*, No. 2.

**Civil Procedure Code (Act XII of 1882).
—(Continued).**

S. 199—I, *Act XVIII of 1850 (Judicial Officers)*, No. 2.

(92) S. 206—See **ACT XXIII OF 1871 (PENSIONS)**, No. 8, 95 P. R. 1906.

S. 206—I, *Execution of Decree*, No. 56.

(93) S. 206—*Amendment of decree, effect of—Appeal against original decree—Limitation, when begins to run.*

Where the plaintiff obtained a decree in a mortgage suit on the 31st January, 1901, which was made absolute on the 28th September following, and the decree was subsequently amended, under S. 206, on the 12th July, 1902, and the plaintiff preferred an appeal to the High Court against the amended decree:

Held, that an amended decree was a decree between the parties within the meaning of the Code and, as such, was appealable, and the plaintiff was, accordingly, competent to prefer an appeal against the amended decree (a).

Held, also, that, for the purposes of determining whether the appeal was barred by limitation, time must be taken to have run from the date of the decrees originally drawn up (b). **Brojo Lal Rai Chowdhury v. Tara Prasanna Bhattacharji**, 3 C.L.J. 188.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 9 C.W.N. 605, F., 28 C. 177, D. (b) 14 M. 150, 6 C. 22 and 22 M. 364, F.

Ss. 206, 244—I, 206.

Ss. 206, 588 & 622—I, 207.

S. 207—I, 208.

(94) S. 209—Inapplicability of, to mortgage decrees—See **RES JUDICATA**, No. 2, 29 M. 65.

S. 209—I, 208.

(95) Ss. 209, 211, 212, award of interest and of mesne profits under, distinction between—See **COURT FEES ACT (VII of 1870)**, No. 11, 33 C. 1232.

(96) S. 211—Interest on mesne profits when claimable—See **INTEREST**, No. 4, 33 C. 329 and No. 95, *supra*.

(96-a) S. 212—See No. 95, *supra*.

S. 212, 244, and 312—I, 208.

(97) S. 214—Suit for pre-emption—appeal by purchaser for enhancement of purchase-money—Construction of decree of Appellate Court

Civil Procedure Code (Act XIV of 1882).
—(Continued).

confirming decree of first Court but silent as to time for payment of purchase—See **PRE-EMPTION**, No. 27, 48 P. R. 1906.

S. 215 A—I, Accounts, No. 5.

(98) **Ss. 215 and 216**—Decree in favour of defendant—account of partnership—Plaintiff's suit should be dismissed when nothing due to him.

* The cases in which a decree can be made in favour of the defendant are those provided for by the S. 216 of the Code. In a suit where the plaintiff prayed for taking an account of a dissolved partnership and alleged that a sum of Rs. 200 was due to him, but, on taking accounts, it appeared that nothing was due to him but something was due to the defendants, *held*, that no decree should be made in favour of the defendants, but the suit ought to be dismissed. **Misri Lal v. Benard Lal**, 3 A.L.J. 283 = A.W.N. (1906), 111.

BANERJI, J.

(99) **S. 216**—See No. 98, *supra*.

S. 220———, 209.

S. 222———, „

Ss. 223 and 295———, „

Ss. 230—I, Execution of Decree, No. 59.

Ss. 230 & 235—I, 212.

* **Ss. 230, 258, 259—I, 211.**

Ss. 230 & 295—I, 212.

(100) **Ss. 230, 269, 272, 295, 486, 489, 490**—Attachment before judgment, effect of—Realisation in execution—Priority—S. 490, effect of—

The object and effect of an attachment before judgment is simply to safeguard the property attached so as to enable the plaintiff to realise the amount of his decree, if he should get one. Though he has a security, he has no charge on the property, which remains that of the defendant, available for other decree-holders. Nor does a decree following such attachment constitute a plaintiff a secured creditor, but the latter must, as any other creditor, apply for execution, from which application he is not exempted, by S. 490 of the Civ. Pro. Code. In short, a plaintiff decree-holder, who has attached before judgment; has not, by reason of such attachment or process, incidental thereto any right to be treated preferentially to other judgment-creditors.

Civil Procedure Code (Act XIV of 1882).
—(Continued).

There must be realisation in execution to give rights of priority. **Sewdut Roy v. Sree Canto Maity**, 10 C.W.N. 684 = 33 C. 689.

WOODROFFE, J.

Reference.—12 B. 400, R.

S. 231—I, 213.

(101) **Ss. 231 and 260**—Execution of decree for perpetual injunction application for—Notice to judgment-debtor, whether necessary—Execution by one of two decree-holders without notice—Relief not prayed for, whether allowable.

In executing a decree for perpetual injunction against a judgment-debtor, who has deliberately disobeyed an order of Court, has tried to evade it by colourable transfers of the property and has had ample opportunities to contest the allegations of the decree-holder, the Court is not bound to issue any notice to the judgment-debtor before passing an order under S. 260 of the Code; nor is any notice necessary under S. 231 (a).

The decree-holder is not necessarily limited to the relief asked for in his application, but may be granted other reliefs, which the law allows him (b). **Durgadas Nundi v. Dewaraj Agarwalla**, 3 C. L. J. 112 = 10 C. W. N. 297 = 33 C. 806.

RAMPINI and MOOKERJEE, JJ.

References.—(a) The rule laid down in 8 C. 174 is not of general application. (b) 19 B. 34, D. and 26 B. 287, R.

(102) **S. 232**—Order allowed to become final—Subsequent regular suit.

Held, that no suit will lie to establish a right to execute a decree when an order dismissing an application, under S. 232, has been allowed to become final. **Amanat-ul-lah Khan v. Sardah Parsad**, A.W.N. (1906), 133 = 9 A.L.J. 428 = 28 A. 613.

KNOX and AIKMAN, JJ.

References.—1 A.L.J. 61, *Appr.* and 20 A. 539, D.

S. 232—I, 213.

(103) **Ss. 232, 244**—Dismissal without enquiry of an application under S. 232, failure to appeal from—Separate suit for declaration, whether maintainable.

Civil Procedure Code (Act XIV of 1902).

—(Continued).

Plaintiff had applied to be made a party to certain execution-proceedings, but the District Munsiff dismissed his petition, even without any inquiry into the question as to whether the plaintiff was the legal representative of the deceased judgment-creditor. It was open to the plaintiff to appeal against that order (a); but, without doing so, he brought the present suit for declaration of his right to represent the judgment-creditor. *Held*, since his remedy was by way of appeal and he failed to take that remedy, he could not now bring a separate suit to obtain the same remedy. *Kunhammad v. Amad*, 16 M.L.J. 27.

BENSON and MOORE, JJ.

Reference.—(a) 25 M. 548, R.

Ss. 232, 244—I, 214, 215.

S. 232—I, 215.

S. 234—, & I, Execution of Decree, No. 76.

Ss. 234, 244 (c)—I, 216.

(104) Ss. 237 and 578—Execution of decree—Application for attachment—Omission to verify inventory of property sought to be attached—Irregularity.

Held, that the omission, in an application in execution for attachment of immovable property, to verify the inventory of the property sought to be attached in the manner prescribed by S. 237 of the Code of Civil Procedure, is an irregularity only and does not vitiate the application. *Nasir-un-nissa v. Ghafur-ud-din*, A. W.N. (1905), 263=28 A. 244.

BANNERJI and RICHARDS, JJ.

Reference.—22 A. 55, F.

(105) S. 244—Mortgage decree, execution of, against the successor of the judgment-debtor—Fresh suit, if necessary, when successor claims by survivorship under the Mitakshara law.

A mortgagee is entitled to execute his mortgage decree against a successor of the judgment-debtor, even when he holds the property by survivorship under the Mitakshara law, without bringing a suit for a declaration that the property in his hands is liable to be sold in execution of the mortgage decree. It is open to the successor to take the very defences in execution-proceedings which he might take in a fresh suit. *Chandra Prasad v. Sham Koeri*, 3 C. L.J. 181=38 C. 676.

PRATT and BODILLY, JJ.

Civil Procedure Code (Act XIV of 1902).

—(Continued).

Reference.—(1906) M.L. App. No. 7 of 1906, F.

(106) S. 244—Representative of judgment-debtor—Rent decree against recorded tenant—Transfer of portion of occupancy holding before decree.

Where the landlord of an occupancy holding obtains a decree for rent against his recorded tenant, an unregistered transferee of the tenant, into whose hands a portion of the holding had previously passed, is bound by the decree and is, therefore, a representative of the judgment-debtor within the meaning of S. 244 of the Civil Procedure Code (a). *Gopi Nath Chattopadhyaya v. Sajani Kanta Singh*, 10 C. W. N. 240.

MACLEAN, C. J. and GEIDT, J.

Reference.—(a) Principle of 24 C. 62, Appl. 9. C. W. N. 124, F.

(107) S. 244—Execution of decree—Death of judgment-debtor pending execution-proceedings—Questions arising between representatives of judgment-debtor and decree-holder.

Where a judgment-debtor dies after the passing of a decree and his legal representatives are brought on the record in execution-proceedings to represent him in respect of the decree, questions which they raise as to property which they say does not belong to his assets in their hands, and as such is not capable of being taken in execution, are questions which, under S. 244 of the Code of Civil Procedure, must be determined in the execution department and not by separate suit. *Kali Charan v. Jewat Dube*, A.W.N. (1906), 180=28 A. 51.

STANLEY, C. J. and BURKITT, J.

Reference.—12 A. 818 and 17 U. 711, F.

(108) S. 244—One of two joint decree-holder—recovering the entire decree amount, maintains liability of suit against, by the other decree-holder for his share.

Where one of two joint decree-holders receives the entire decree amount from the judgment-debtor and certifies to the Court the fact of such receipt, although such certificate does not absolve the judgment-debtor from liability, to the other decree-holder, yet the latter is not if he elects to adopt such a course, precluded from suing to recover his share from his joint decree-holder instead of proceeding against the

Civil Procedure Code (Act XIV of 1908).
—(Continued).

judgment-debtor in execution. **Somasundaram Pillai v. Krishnasawmy Naidu**, 20 M. 183.

SUBRAHMANYA AYYAR, OFFG. C.J. and
SANKARAN NAIR, J.

- (109) *S. 244—Cancellation of license under S. 27 of Madras Act IV of 1889—Decree in favour of licensee in default of payment of proper compensation—Amount of compensation determinable in execution-proceedings.*

Suit, against the Secretary of State, for cancellation of his order resuming certain salt-pans and for possession of those pans. Plaintiff obtained a decree entitling him to recover possession, if the defendant failed to pay the value of the proprietary right in the land. *Held*, the Court executing such decree is competent to determine the proper value of such proprietary right and no separate suit need be brought for the purpose. **The Collector of Chingleput for the Secretary of State for India v. Subraya Mudalliar**, 20 M. 181.

DAVIES and BENSON, JJ.

- (110) *S. 244—Decree-holders' taking possession of greater area than what was decreed—Suit by judgment-debtor for possession—maintainability of.*

If a decree-holder in a foreclosure suit take possession of a greater area of land than what is actually decreed to him, the judgment-debtor cannot bring a regular suit to recover possession of that land. His only remedy is by an application under S. 244 of the Code.

Where the plaintiff came to know in 1892, that the defendant had fraudulently taken possession of land in excess of that decreed to him and brought a suit more than 8 years after that date, *held*, that the plaintiff could not be treated as an application for execution, the remedy of the plaintiff having been barred at the date of suit. **Arjun Singh v. Machchal Singh**, 8 A. L. J. 601 = A.W.N. (1906), 238.

ATKMAN, J.

- (111) *S. 244—Suit for actual possession—Limitation proceedings in execution—Delivery of formal possession.*

Delivery of formal possession in execution of a decree effects a complete transfer of the property and furnishes a good foundation for a suit when the defendant refuses to deliver up

Civil Procedure Code (Act XIV of 1908).
—(Continued).

actual possession. S. 244 of the Code does not bar a suit for actual possession inasmuch as the proceedings in execution end with the delivery of formal possession. **Jagan Nath v. Milap Chand**, 3 A.L.J. 501 = A.W.N. (1906), 218 = 28 A. 722.

STANLEY, C.J. and **KNOX**, J.

References.—11 C. 93, 24 C. 715, 19 A. 499, R.

(112) *S. 244—Sale in contravention of S. 99 of the Transfer of Property Act could be set aside in execution-proceedings under—See TRANSFER OF PROPERTY ACT, No. 107, 38 C. 283 and Nos. 21, 22 & 103, supra and 189, 198 and 307, infra.*

(113) *S. 244—Sale certificate, whether a separate suit to set aside a, on the ground of fraud, is maintainable, when decree has ceased to be executable.*

Plaintiff sued to have a sale certificate set aside. The decree in question was admittedly dead at the time he instituted the suit. It was clear, therefore, that, at the date of the suit, plaintiff could not have proceeded by way of application under S. 244 of the Code. *Held*, independent of the fact of his not having been able to make such an application at the time plaintiff became aware of the existence of the sale certificate, there was nothing to prevent him from bringing a regular suit to set aside the certificate, if he was within limitation for a regular suit. **Nga Sa Gyi v. Nga Ye Ban**, U.B. R. (1905) Civil Procedure, 36.

SHAW, J.C.

References.—10 C. 538, 19 C. 683, 25 C. 718, 20 M. 349, 22 B. 267 and 16 W. R. 269 (Civ), R.

- (114) *S. 244—Debt of judgment-debtor before sale—Sons and grandsons, if bound—Representatives for purposes of execution.*

Held, that the persons who take the judgment-debtor's share in the joint family property by survivorship are representatives of the judgment-debtor within S. 244, Civ. Pro. Code, and that it is not open to them to object that the debt for the recovery of which the decree had been obtained was tainted with immorality and illegality. **Peary Lal Sinha v. Chandi Charan Sinha**, 11 C.W.N. 163.

RAMPINI & MOOKERJEE, JJ.

Civil Procedure Code (Act XIV of 1902).

—(Continued).

References:—24 C. 62, *Appl.*, 9 C.W.N. 184, R.

(115) S. 244—Decree, validity of—Execution of decree, scope of.

No question touching the validity of a decree can be raised in the course of proceedings in execution of that decree. *Rashbehari Singh v. Thakur Joyannia Singh*, 4 C.L.J. 475.

MAHLEAN, C.J., and MOOKERJEE, J.

(116) S. 244—Delay in appealing against execution-proceedings—See LIMITATION ACT, No. 9, 8 Bom. L. R. 858.

(117) S. 244, applicability of, to a suit to set aside a sale under Act I of 1894 (Public Demands Recovery), when the only grounds alleged are irregularities in the execution-proceedings subsequent to decree—See ACT I OF 1895 (BENGAL), No. 2, 1 C. L. J. 588.

(118) S. 244—Maintainability of suit based on order of the High Court in its insolvency jurisdiction—See INSOLVENCY, No. 3, 9 C.W.N. 952.

S. 244—I, 217, 224.

S. 244—I, Transfer of Pro. Act, No. 75.

S. 244—I, Act I of 1895 (Bengal), No. 3.

S. 244 (c)—I, 229.

(119) Ss. 244 and 246—Decree ordering recovery of money by sale of property is a decree for money within S. 246—Attaching creditor, a representative of the decree-holder.

On an application in execution of a decree, for realization of the entire amount due by sale of the properties directed, by the decree, to be sold, the judgment-debtor claimed to set off against such amount, certain money due to him under a money decree in his favour. Overruling the contention that the above decree, which only ordered sale of property and no direct payment of money, was not a decree for money, so as to allow a set off against it under S. 246 of the Code, it was held, that it was open to the judgment-debtor to set off against such decree any decree for money held by him (a).

An attaching creditor becomes the representative of the decree-holder for the purposes of S. 244 of the Code and any order passed in execution, as between him and the judgment-debtor, is therefore open to appeal (b). *Krishnan v. Venkatapathi Chetti*, 29 M. 818.

BENSON and MOORE, JJ.

Civil Procedure Code (Act XIV of 1902).

—(Continued).

References.—(a) 36 M. 478 (overruling 24 M. 412), F. (b) 16 M. 20, F.

Ss. 244, 257 A—J, 228.

(120) Ss. 244, 278, 280 and 282—Property attached—Legal representative—Plea that property attached is trust-property—Appeal.

An objection raised by the legal representative of a deceased judgment-debtor to the effect that the property attached is not the deceased's but that it is trust property which he holds as trustee, is not an objection falling under S. 244 of the Code, but under S. 278 of the same, and an order passed thereon is not appealable as a decree under S. 244, Civ. Pro. Code. *Ali Sajjad v. Bhajan Singh*, 8 A. L. J. 870 = A. W. N. (1906), 187.

STANLEY, C. J. and BANERJEE, J.

Reference.—12 A. 813, F.

(121) Ss. 244, 278—Act No. IV of 1889 (Transfer of Property Act), Ss. 88, 89—Execution of decree—Appeal—Revision.

Certain property comprised in a decree under S. 88 of the Transfer of Property Act was proclaimed for sale. As to a portion of this property, an application was made by a person, who alleged himself to be the owner thereof, praying for its exemption from sale. This application purported to be and was dealt with by the Court as, an application under S. 278 of the Code of Civil Procedure, and was allowed. The decree-holder appealed, and her appeal was entertained as an appeal under S. 244 and was allowed. Held, on appeal by the objector, to the High Court, that neither S. 278 nor S. 244 of the Code were applicable, the former because the property in question had not been attached, the latter because the objector was not the representative of the judgment-debtor, but claimed adversely to them. No appeal lay to the High Court, but the memorandum of appeal was treated as a petition in revision. *Muhammad Yahya v. Lalta Del*, A.W.N. (1906), 62.

RICHARDS, J.

Ss. 244, 278, 282, 286—I, 224.

(122) Ss. 244, 278, 282—Appeal—Claim—Debtor's property—Right of suit—Estoppel.

In execution of a decree obtained by the defendant against the plaintiff's father, the plaintiff as legal representative of his father

Civil Procedure Code (Act XIV of 1908).
—(Continued).

preferred a claim to a property attached on the ground that it was not the personal property of his father but that it was *debutter* property; the claim being disallowed, he preferred an appeal which was dismissed upon the defendant's objection that it was an order, not under S. 244 of the Code but upon an application under S. 278.

Held, that in a regular suit by the plaintiff for declaration that the property is *debutter*, defendant is estopped from raising the question that it was barred by S. 244 of the Code. **Hars Dhan Kalia v. Purna Chandra Mondal**, 11 C.W.N. 145.

BRETT & GUPTA, JJ.

(129) Ss. 244 and 295—Sale of mortgaged property at the instance of first mortgagee—Surplus sale-proceeds withdrawn by third mortgagee—Suit by second mortgagee to enforce his lien on surplus sale-proceeds—Maintainability of suit—See MORTGAGE (SALE), No. 1, 9 C.W.N. 989.

(124) Ss. 244 and 311—Execution of decree—Property sold as non-ancestral after inquiry by Court and notice to judgment-debtors—Plea that property was in fact ancestral barred.

Where, after an inquiry as to the nature of the property, of which the judgment-debtor had notice, a Court in execution of a decree caused certain immovable property to be sold by auction as non-ancestral, the judgment-debtors standing by and neglecting to supply the Court with any information as to the nature of the property sold, it was *held* that it was not competent to the judgment-debtors, subsequently, to seek to have the sale set aside upon the ground that the property was ancestral and ought to have been dealt with in the manner provided by law in respect of such property. **Behari Singh v. Mukat Singh**, A.W.N. (1906), 8 = 3 A.L.J. 140 = 28 A. 278.

STANLEY, C.J. and BURKITT, J.

References.—13 A. 141, F., 15 I.A. 171, R., 4 A. 382, not F.

See, also, I, 224, 226.

See I, Act VIII of 1885 (Bengal Tenancy), No. 39.

Ss. 244, 311 & 333—T, 223.

Ss. 244, 312—See I, Act II of 1901 (N.W.P. Tenancy), No. 16.

Civil Procedure Code (Act XIV of 1908).
—(Continued).

Ss. 244, 312, 583 and 586—T, 226.

(125) Ss. 244, 312—Purchaser at auction—representative of judgment-debtor—Suit for possession of property purchased, not maintainable.

The plaintiffs purchased the property in dispute in execution of a decree. Seven years later, they applied for delivery of possession. The application was dismissed as time-barred. They then brought the present suit for possession; *held*, that the purchaser under a sale in execution of a decree is a representative of the judgment-debtor and is precluded by the provisions of S. 244 of the Code, from instituting a suit for possession of the property purchased by him under the sale. **Kallan Singh v. Thakur Das**, 8 A.L.J. 234 = A.W.N. (1906), 87.

STANLEY, C.J. and BURKITT, J.

(126) Ss. 244, 583—Execution—Review—Recovery of mesne profits for period between decree of High Court in appeal and decree in review—Separate suit—Application in execution.

Where M. D., defendant in a partition suit, was deprived by the High Court of a house allotted to him by the first Court and, subsequently, the High Court, acting under Ch. XLVII, set aside its decree and M. D., having recovered possession of the house, applied under S. 583 of the Code for mesne profits. *Held*, that S. 583 had no application, the order entitling M. D. to restitution having been passed under Ch. XLVII, not in appeal under Ch. XLI. *Held*, further, that, it was not necessary for M. D. to bring a separate suit, one of his remedies was by "summary process, i.e., by an application under S. 244, and the application might be deemed to be one under that section (a).

Semble, also, that the lower Court would have an inherent right to order restitution of what had been declared to have been improperly taken (b).

It was further urged that, in any case, M. D. could not recover more than three years' mesne profits. *Held*, that the applicant, having been guilty of gross laches in not applying for review for many years, should get mesne profits only from the date of the High Court's decree in review. **Collector of Meerut v. Kalka Parshad**, A.W.N. (1906), 171 = 3 A.L.J. 556 = 28 A. 655.

BANERJI and RICHARDS, JJ.

Civil Procedure Code (Act XIV of 1882).
—(Continued).

References.—(a) 10 M.L.A. 208, R., 9 W.R. 402, 25 A. 441 and 27 A. 485, *Apur* (b) 14 C. 484, 22 C. 981, R.

(127) *Ss. 244, 622—Execution of decree—Question not relating to the execution of the decree—Appeal—Revision—Practice—Exercise of High Court's revisional jurisdiction.*

The plaintiff, in a suit for an injunction, obtained, a decree prohibiting the defendant from obstructing him in building within a certain area, and also giving costs. This decree was executed for the costs awarded. Subsequently, the judgment-debtor applied to the executing Court, asking that the decree-holder should be ordered to demolish certain structures, which had been erected beyond the limits prescribed by the decree, and obtained an order as prayed. *Held*, that no appeal would lie from such an order.

Held, also, that the High Court is competent, of its own motion, to call for the record of a civil case and pass such orders as it thinks fit, and the exercise of its powers of revision on the civil side will not invariably (though such is ordinarily the case) be confined to matters in respect of which no other remedy is open to the party aggrieved. **Debi Das v. Ejas Hussain**, A.W.N. (1906), 191 = 2 A.L.J. 749 = 28 A. 72.

KNOX, J.

References.—21 A. 133 and 15 A. 405, *Refd.* to; 7 C.L.R. 191, *Distd.*

(128) *S. 244, cl. (c)—Fraud—Sale in violation of S. 99, Transfer of Property Act—Objection that no suit lay—When application put in objection raised that a suit lay—estoppel.*

Clause (c) of S. 244 of the Code covers a case, where it is sought to set aside a sale held in execution of decree on the ground of fraud, or as having been held in violation of S. 99 of the Transfer of Property Act. A regular suit does not lie to set aside a sale upon these grounds.

Per AIKMAN, J., that, where the appellant had successfully resisted a suit to set aside a sale on the ground that suit was not the proper remedy but that the matter should be tried in execution, he should not be allowed to go behind that and object, in the execution department, that an application under S. 244 of the Code, did not lie, but that a suit should be brought. *Ga-*

Civil Procedure Code (Act XIV of 1882).
—(Continued).

ya Prasad Misir v. Randhar Singh, 3 A. L.J. 456 = A.W.N. (1906), 206 = 28 A. 681.

BANERJI and AIKMAN, JJ.

Reference.—30 Ch. D. 37, R.

(129) *S. 246—See No. 119, supra.*

(130) *S. 248—For the purpose of Art. 179 (5) of the Limitation Act, the date of issue of notice under—is the date when it is actually issued and not the date of the order of the Court to issue the same—See LIMITATION ACT, No. 146, 10 C. W. N. 308.*

(131) *S. 248, effect of non-service of notice under—Order absolute for sale—See TRANSFER OF PROPERTY ACT (IV OF 1882), No. 78, 2 A.L.J. 610.*

(131-a) *S. 248—Date issuing notice, meaning of—See LIMITATION ACT, No. 147, 1 M.L.J. 395,*

(132) *S. 252, execution of decree against legal representatives—Property of deceased exempt from attachment—Whether representative personally liable.*

In this case the counsel, for the decree-holder petitioner, contended that, under S. 252 of the Code, the decree might be executed against the property of the representatives of his debtor other than that inherited from the latter, for the reason that the latter property was not liable to be sold in execution of decree because of the Land Alienation Act. *Held*, the petitioner could not acquire any personal right against the representatives for the mere reason that the Land Alienation Act deprived him of the right of selling the property of his deceased debtor come into the hands of the representatives. **Ram Gopal v. Harjas**, 123 P.R. 1906.

REID, C. J.

(133) *S. 253—Decree passed against surety and judgment-debtor—Application for execution against the judgment-debtor alone—Liability of surety—See LIMITATION ACT, No. 141, 8 Bom.L.R. 807.*

(134) *S. 253—Decree—Execution-proceedings against a surety.*

Where a surety has become liable for the performance of a decree passed prior to his entering into the obligation, he cannot, under S. 253 of the Code, be proceeded against in execution of the decree. **Lakshman Sadashiv v. Gopal Appaji**, 8 Bom. L. R. 367 = 80 B. 506.

JENKINS, C. J. and ASTON, J.

S. 253—I, 229.

Civil Procedure Code (Act XIV of 1882).
—(Continued).

(135) *Ss. 252, 545, 549*—*Surety for due performance of appellate decree, liability of, to be proceeded against in execution.*

On appeal by defendant from a decree against him, he applied, under S. 545 of the Code, for stay of execution, when security was given by certain persons as sureties on his behalf. The decree was confirmed in appeal and the plaintiff-decree-holder took out execution against the said sureties of the defendant-judgment-debtor. The application for execution was rejected by the lower Courts on the ground that the plaintiff should proceed against the sureties by way of separate suit, and not in execution.

On revision, the question was referred to the Full Bench, whether a surety, who had given security, under S. 545 of the Code, for due performance of such decree or order as may ultimately be binding upon him, could be proceeded against summarily in execution of decree, or whether the proper remedy against him was by way of separate suit. *Held*, that no distinction could be drawn between the case of a surety who, before the passing of a decree in an original suit, has become liable as such for the performance of the same, as well as, that of a surety who has given security for the costs of an appeal, both of whom might be proceeded against in execution, under *Ss. 248 and 549* of the Code, respectively, and a surety who has given security, for the performance of the appellate Court's decree, under S. 545 of the Code, who could, therefore, be as well proceeded against summarily in execution as the other sureties above referred to. **Raghbar Das v. Salig Ram**, 109 P.R. 1906 (F.B.)

CHATTERJI, RATTIGAN and CHITTY, JJ.

References:—77 P.R. 1895, *overruled*; and 22 C. 25, *Diss.*

Ss. 254, 260, 649—*I, Act 1 of 1894 (Land Acquisition), No. 11.*

S. 257—*I, 229.*

(136) *S. 257 A*—*Decree payable by instalments—Default in payment of instalments—See EXECUTION OF DECREE, No. 4, A.W.N. (1905), 268.*

S. 257 A—*I, 230.*

„—*I, Limitation Act, No. 36, Execution of Decree, No. 77.*

Civil Procedure Code (Act XIV of 1882).
—(Continued).

(137) *S. 258*—*Uncertified agreement in supersession of decree, competency of judgment-debtors to plead—*

In objection to an application for execution, it is not competent for the judgment-debtors to set up an uncertified agreement in supersession of the decree sought to be executed, since such a plea is unsustainable by reason of the provisions in *S. 258* of the C.P.C. **Seetharama Aiyar v. Chinna Chenga Reddy**, 16 M.L.J. 38.

BENSON and MOORE, JJ.

References.—21 M. 356, *F.*, 21 M. 409, *doubted*.

(138) *S. 258*—*Execution of decree—Power of one of several joint decree-holders to certify satisfaction of entire decree.*

One of two or more joint decree-holders is not competent, without direct authority from the other decree-holders, to certify to Court satisfaction of the entire decree by payment out of Court (a). The payment, if real, cannot operate as a discharge of the decree except as to the share therein of the recipient. **Dhanraj v. Ujain Singh**, 34 P.R. 1906 = 93 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

References.—(a) 26 A. 394 and 25 M. 481, *F.*, 22 W.R. 77, *D.*

(139) *S. 258, scope of—Applicability to foreclosure-decrees—Execution of decree.*

S. 258 cannot be confined in its operation to the adjustment of money-decrees alone. It is applicable to all decrees alike, whether for money or for foreclosure (which was the case in this particular instance) or any other kind of decree. **Lachu v. Kishan Lal**, 44 P.R. 1906.

ROBERTSON and CHITTY, JJ.

References.—5 C. 786 and 25 C. 718, *F.*, 22 M. 188 and 25 M. 412, *Diss.*

(139-a) *S. 258*—*See No. 80, supra.*

(140) *Ss. 258, 462*—*Compromise by guardian after decree—Leave not obtained under S. 462—Adjustment of decree cannot be certified.*

On an application, under S. 258 of the Code, for certifying that a decree claim of a minor had been adjusted by a compromise after a decree, it appeared that the guardian of the minor had not applied for and secured leave, under S. 462 of the Code, to enter into the said compromise;

Civil Procedure Code (Act XIV of 1908).

—(Continued).

held, the Court below was right in having declined to certify the above adjustment. **Arunachellam Chetty v. Ramanadham Chetty and Alamelu Achi**, 29 M. 309.

WHITE, C.J. and MOORE, J.

- (141) S. 260—*Perpetual injunction, execution of a decree for, on each successive breach of decree—Limitation of three years from every breach—Executing Court, duty of, not to go behind the decree.*

On obtaining a decree for perpetual injunction, the holder of it may enforce the same, on each successive breach of the injunction, under S. 260 of the Code and an application to so enforce it must be made, under Art. 178, Sch. II of the Limitation Act, within three years of the date of the particular breach of it which is the occasion for the application. The decree-holder, however, is not obliged to take action in regard to every petty infringement of the injunction on pain of allowing the decree to become altogether inoperative after three years from the date of the first petty breach and depriving the decree-holder of the fruits of his decree if a serious infringement of it were afterwards made.

Held, also, that it is not competent for an executing Court to go behind the decree, but such Court ought to give effect to the terms of the decree, without attempting to read into it limitations gathered from a reference to the records of the suit in which the decree was passed. **Yenkatachallam Chetty v. Veerappa Pillai**, 29 M. 314.

BENSON and MOORE, JJ.

- (142) S. 260—*Right of decree-holder under—to ask the Court to enforce decree granting injunction to abstain from some particular Act—See LIMITATION ACT, No. 129, A. W. N. (1906), 10.*

(143) S. 260—*See No. 101, supra.*

See, also, I, Act I of 1894 (Land Acquisition), No. 11.

- (144) S. 263—*Decree for redemption, delivery of possession of land under, includes standing crops thereon—Appeal from order in execution of decree, whether appellate Court can alter effect of decree.*

Where a person obtained a decree, entitling him to redemption, and, in execution of such decree, possession of the land was delivered

Civil Procedure Code (Act XIV of 1908).

—(Continued).

through Court to such person under S. 263 of the Code, the delivery must be deemed to have been made, not of the land alone, but of all things attached to it, including the crops growing thereon; consequently, the defendant, from whose possession the property had been taken and delivered, could not claim to re-enter the same in order to reap, gather and dispose of the crops he had cultivated thereon. *Held*, also, on appeal from an order in execution-proceedings relating to the decree, it is not competent for the appellate Court to so alter the original decree as to allow the judgment-debtor to remove the crops or declare his rights to the same. **Mung Daw v. Tun Gaung**, 3 L.B. R. 120.

ADAMSON, C.J., and FOX, J.

- (145) S. 263—*Act No. III of 1901 (United Provinces Land Revenue Act), S. 107—Partition—Execution of a Civil Court decree for partition of revenue-paying property.*

A decree of a Civil Court for partition is subject to the provisions of S. 107 of the United Provinces Land Revenue Act and cannot be fully executed until the decree-holder's name is recorded in the revenue papers. **Tulsi Das v. Shoo Narain**, A.W.N. (1906), 53=3 A.L.J. 336=28 A. 375.

BANKERJI and RICHARDS, JJ.

S. 265—I, 231.

- (146) S. 266—*Right to future maintenance, if an annuity is—Annuity, if attachable.*

An annuity given by will is not a right to future maintenance within the meaning of S. 266 of the Code and can be attached in execution of a decree. **Gopal Lal Seal v. F.J. Marsden**, 10 C.W.N. 1102.

SALE, J.

Reference.—10 C.W.N. 1102, foot-note (1892), F.

- (147) S. 266 (k)—*Execution of decree—Attachment—Contingent right—Right of pre-emptor under a conditional decree for pre-emption.*

Held, that the interest in the pre-empted property of a successful pre-emptor, who has not yet paid the pre-emptive price fixed by his decree, is an interest, the attachment of which is prohibited by S. 266 (k) of the Code of Civil

Civil Procedure Code (Act XIV of 1908).
—(Continued).

Procedure. **Savakh Singh v. Sidh Gopal**, A.W.N. (1906), 69=3 A.L.J. 189=28 A. 888.

KNOX and ALKMAN, JJ.

Ss. 266, 268—I, 231.

S. 266 (b)—I, 232.

S. 266 (c)—I, 232.

Ss. 266, 276—I, Act XVIII of 1876 (Oudh Laws), No. 4.

Ss. 268, 274, 276—I, 232.

(148) S. 269—See No. 100, *supra*.

(149) S. 272—See No. 100, *supra*.

(150) S. 273—*Execution of decree—Order attaching the decree—Effect of—Want of jurisdiction to proceed with execution—Sale without jurisdiction—Validity of such sale.*

The Subordinate Judge, before whom the present execution case was pending, received from a Munsiff's Court an order attaching the decree under S. 273 of the Code. Instead of giving effect to the attachment order, he returned it to the Munsiff on the ground that it did not state the amount of the decree, under which it was issued and proceeded with the execution, which resulted in the sale in question. *Held*, that the Court, on receiving the attachment order was bound to comply therewith. Under S. 273, the attachment of the decree has the effect of staying further execution and of debarring the Court from proceeding further until that bar has been removed in either of the ways specified in that section. The Subordinate Judge had no jurisdiction to proceed with the sale in question and the sale, therefore, was invalid. **Manik Lal Seal v. Banmali Mukerjee**, 82 C. 1104=10 C. W. N. 198=9 C.L.J. 27.

PRATT and BODILLY, JJ.

(151) S. 273—*Decree for sale on mortgage—attachable in execution.*

A decree for sale upon a mortgage is not a decree for money and can be attached and sold in execution of a money-decree under the penultimate clause of S. 273 of the Code. **Delhi London Bank Ltd. v. Kunwar Partab Singh**, 8 A.L.J. 585 (F.B.)=A.W.N. (1906), 236=1 M.L.T. 247.=28 A. 771.

STANLEY, C.J., BAKERJI and ALKMAN, JJ.

References.—A.W.N. (1886), 123, *overruled*, A.W.N. (1899), 184; 27 A. 501; 4 C.W.N.

Civil Procedure Code (Act XIV of 1908).
—(Continued).

XXXV; 6 C.W.N. 5; 26 A. 21, 2; 28 M. 244, not F. 2 A. 203, F.

S. 273—I, *Pre-emption*, No. 82.

—I, 234.

Ss. 276, 278—I,—235.

Ss. 276, 295—I,—236.

(152) Ss. 276, 303—*Sale of property pending an attachment—All claims enforceable under the attachment—Sanction of the Court to the sale.*

Prima facie, a sale-deed executed by one person in favour of another operates to convey to that other the interest of the executant in the property the deed purports to pass. But, to prevent frauds on the decree-holders, it is provided by S. 276 of the C. P. Code, that "when an attachment has been made by actual seizure or by written order intimated and made known in the manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage, or otherwise... during the continuance of the attachment, shall be void as against all claims enforceable under the attachment."

S. 305 of the C. P. Code is an enabling section, and qualifies the prohibition contained in S. 276; on compliance with the conditions of that section, a private alienation, notwithstanding S. 276, becomes absolute even against all claims enforceable under the attachment. **Shivlingappa Basappa v. Channasappa Fakirappa**, 8 Bom. L.R. 16=1 M.L.T. 46=80 B. 387.

SIR LAWRENCE JENKINS, C.J. and RUSSELL, J.

(153) S. 273—333 Act VIII of 1886 (BENGAL TENANCY), No. 24, 10 C. W. N. 547, and Nos. 21, 120, 121, 122, *supra*.

S. 278—I, 237, 238.

S. 278—I, Act IX of 1897 (*Provident Funds*), No. 1.

(154) Ss. 278, 281, 283—*'Investigation,' meaning of term—Order against claimants under S. 281—Payment of decree amount by a mortgagor beyond one year from the order, effect of.*

In this case, the Court of first instance held that the plaintiff's suit was barred by Art. 11 of the second schedule to the Limitation Act, the plaintiffs not having brought a suit to establish their right to the property in dispute within one

Civil Procedure Code (Act XIV of 1908).
—(Continued).

year from the date of the order made against them, under S. 283, rejecting a claim previously preferred by them on the attachment of the property. The order against the plaintiffs was to this effect, *viz.*, "The sale seems to be collusive: claim rejected." The lower appellate Court was of opinion that there was no bar by limitation, inasmuch as there had been no 'investigation' of the plaintiff's claim within the meaning of that word as used in the Code.

Held, that the judgment of the lower appellate Court could not be supported on the ground that there has been no 'investigation.' It is not possible to define the amount of inquiry, which constitutes an 'investigation.' If the order purports to deal with the claim² on the merits, it must be taken that there has been an 'investigation' and a suit, therefore, by a person aggrieved thereby will be governed by Art. 11 of the Limitation Act.

Held, further, that, where after more than a year from the date of the said order, the attachment was raised on payment by one of the mortgagees (defendants in the suit) in possession of the property, such payment not having been made within one year after the date of the order, the order is conclusive as between the claimants (the plaintiffs) and the defendants. To hold that the right of an unsuccessful claimant to bring a suit remains in a state of suspended animation for an indefinite period, after the expiration of a year from the date of the order against him, liable to be revived at any moment by the payment off of the amount of the decree, would lead to uncertainty of title and great inconvenience and would be inconsistent with the policy of the legislature in prescribing a short period of limitation for suits by parties, against whom an order has been made in claim-proceedings. **Kayyana Chittamma v. Doosy Gavaramma**, 16 M.L.J. 196 = 29 M. 225.

WHITE, C.J. and MOORE, J.

(155) *Ss. 278, 281 and 283*—'Right which the plaintiff claims to the property in dispute,' meaning of.

The words "the right which the plaintiff claims to the property in dispute" in S. 283 of the Code, mean the right which is claimed in that proceeding in respect of the property, that is, the right to have it sold or the right to have it released from attachment. They do not mean

Civil Procedure Code (Act XIV of 1908).
—(Continued).

the right or title to the property. The three *Ss. 278, 281 and 283* must be read together (a).

When, therefore, a claimant, being unsuccessful in a claim under S. 278, has got the property released from attachment by coming to terms with the decree-holders without notice to the judgment-debtors, a suit subsequently brought by him against the judgment-debtors for recovery of possession is not barred under S. 283 of the Code. **Morshia Barayal v. Elahi Bux Khan**, 8 C.L.J. 381.

MITRA and CASPEREZ, JJ.

Reference.—(a) 15 C. 674 and 81 C. 228, F.

(156) *Ss. 278, 282*—Declaratory suit for release of property from attachment—Valuation—See JURISDICTION (GENERAL), No. 2, 71 P.L.R. 1906.

(157) *Ss. 278 and 283*—Execution of decree—Suit against successful claimant for declaration that certain property belongs to the judgment-debtor—Judgment-debtor not a necessary party.

Where a decree-holder brings a suit against a successful claimant to establish that certain property belongs to his judgment-debtor and that he is entitled to bring it to sale in execution of his decree, the only person against whom he claims relief is the successful claimant. To such a suit, the judgment-debtor is not a necessary party. **Ghasi Ram v. Mangal Chand**, A.W.N. (1905), 172 = 2 A.L.J. 491 = 28 A. 41.

BANERJI and RICHARDS, JJ.

Ss. 278, 283—I, 238, 240.

Ss. 278 and 283—I, 242.

(158) S. 280—See BABUANA GRANT, No. 1, 10 C. W. N. 978 and No. 120, *supra*.

(159) S. 280—Attachment—Release from attachment—Decree—Execution.

A release from attachment, under the provisions of the Civ. Pro. Code, can only be made under S. 280 of the Code. The section indicates the conditions on which alone that release can be directed. So, a Court, before directing a release, must hold those conditions established. **Chimarlal Balabhai v. N. C. Macleod**, 8 Bom. L.R. 794.

JENKINS, C. J. and HEATON, J.

(160) S. 281—See Nos. 154 and 155, *supra*.

(161) S. 282—See No. 156, *supra* and I, 242.

Civil Procedure Code (Act XXV of 1908).
—(Continued).

(162) *Ss. 288, 289 and 287—Mortgage—Sale in execution of a simple money decree of mortgaged property—Notification of mortgage—Purchaser not estopped from disputing the existence of the mortgage—*

In execution of a simple money decree, the rights of a mortgagor in certain property ostensibly subject to a mortgage were put up to sale. The property was not sold subject to the mortgage, as contemplated by S. 282 of the Code, but the existence of the mortgage was notified in the proclamation sale for the benefit of intending purchasers. *Held*, on suit brought by the mortgagee for sale, that the auction-purchaser was not, under the circumstances, debarred from proving that the mortgage in suit was fictitious and without consideration. *Shib Kunwar Singh v. Shoo Prasad Singh*, A. W. N. (1906), 68=8 A. L. J. 200=28 A. 418.

BARNERJI and RICHARDS, JJ.

(163) *Suit under S. 282, Civ. Pro. Code, by defeated claimant for mere declaration—Prayer for further relief not necessary—Specific Relief Act, S. 42, inapplicability of, to such suit.*

When second defendant attached certain immovables in execution of a decree for money, which she had obtained against first defendant, plaintiff presented a claim based on a mortgage alleged to have been made to him by defendant. The claim having been rejected, plaintiff sued under S. 288, for a declaration of his right as mortgagee to the attached property and for the cancellation of the order of rejection of his claim. On reference to the Full Bench of the question, whether the suit was sustainable with reference to S. 42 of the Specific Relief Act, *held*, doubting the correctness of the decision in *Kunthamma v. Kunthunni*(a), and following the law on the question as correctly laid down by *Murrosami Ibrah, J.*, in his judgment in *Ambu v. Kuttiamma*(b), that the proviso to the said S. 42 of the Specific Relief Act does not operate so as to take away from a party, against whom an order has been made under Ss. 280, 281 or 282 of the Code, the special right conferred by S. 288 to sue for a declaration of his title in so far as it is affected by the order which he seeks to impeach and such a suit is, therefore, not liable to dismissal on account of the omission

Civil Procedure Code (Act XXV of 1908).
—(Continued).

to pray for further relief obtainable. *Kristnam Seeraya v. Pathma Redi*, 38 M. 151.

WHITE, C.J., and SUBRAMANIAM AYYAR and DAVIES, JJ.

References.—(a) 16 M. 140, doubted. (b) 14 M. 28 at p. 25, F.

(164) *S. 288, suit under—Valuation of suit—Jurisdiction.*

A suit by a defeated claimant, under S. 288, for a declaration that the property attached belongs to him and not to the judgment-debtor ought, for purposes of jurisdiction, to be valued according to the value of the property, the subject matter of the suit, and not according to the amount of the decree in execution of which the attachment was made, if the decree amount is larger than the value of the property. *Narayan Ganesh Ghatate v. Bhilraj*, 2 N. L. B. 87.

BATTEN, A.J.C.

References.—15 C. 104, 31 C. 511, 17 A. 69 and 27 A. 440, R.

(165) *S. 298—See Nos. 21, 120, 122, 154, 155, 157, 162.*

S. 283—I, 243 and I, Limitation Act, No. 50.

S. 285—I, 243.

Ss. 285, 295, 483 and 490—I, 244.

(166) *S. 287—See No. 162, supra.*

(167) *Ss. 287, 311—Sale-proclamation, place for sale fixed in—The conducting of the sale elsewhere a material irregularity.*

In this case, contrary to the express order of the Court to sell the property in question at the premises, the sale proclamation advertised the sale to take place at the Court-house, and the sale was in fact conducted at the premises of some of the buildings advertised for the sale. *Held*, this was a serious irregularity, which may well be presumed to cause substantial injury, by keeping away bidders and an irregularity empowering the Court to set aside the sale under S. 311 of the Code, under which, proof of substantial loss was not essential; and further, the mistake in the sale proclamation in question, as regards the place of sale, would, in the ordinary course of events, result in causing injury to the person, whose property was advertised for sale. *Duni Chand v. Atma Singh*, 132 P. R. 1906.

LALCHAND, J.

Civil Procedure Code (Act XIV of 1882).
—(Continued).

References:—22 A. 140, 23 M. 227 (P.C.), 24 C. 291, 30 C. 1, 32 C. 542, 20 A. 412 and 30 P. R. 1899, R.

Ss. 287 and 311—See, also, I, 246.

(168) S. 291—Payment of decretal money and costs for procuring stay of sale—See TRANSFER OF PROPERTY ACT, No. 80, A.W.N. (1905), 168.

S. 294—I, *Limitation Act*, No. 143.

(169) S. 295—Rateable distribution, order for—*Suit for declaration, decree collusive—rateable distribution not allowable.*

After an order for rateable distribution of sale proceeds has been made under S. 295 of the Code, and before the funds have been actually distributed, it is open to one of the decree-holders to maintain a suit for a declaration that the decree of a rival decree-holder is collusive and that he is not entitled to share in the sale-proceeds by way of rateable distribution. **Trailakya Nath Adhya v. Pullin Behari Baral**, 3 C.L.J. 385.

GRIDT and MOOKERJEE, JJ.

Reference.—11 C. 718, D.

(169-a) S. 295—See, No. 69, *supra*.

(170) S. 295, order under, whether Chief Court would interfere with, under S. 70 (1) (a) of the Punjab Courts Act, 1884.

In this case, the petitioners asked for the revision of an order under S. 295 of the Code, and the question had to be decided whether the Chief Court could interfere on the revision side, another remedy being open to the petitioners under the penultimate clause of the above section. *Held*, it is not the practice of the Chief Court to interfere on the revision side, in exercise of its extraordinary jurisdiction, under the Punjab Courts Act, with an order under S. 295 of the Code, save in exceptional circumstances clearly warranting such interference. **Fasal Din v. Narain Singh**, 128 P. R. 1906.

JOHNSTONE & HURRY, JJ.

References:—65 P. R. 1905, 82 P. R. 1905, 21 P. R. 1902 & 76 P. R. 1902, R.

(171) S. 295—See Nos. 100, 128.

S. 295—I, *Mortgage (Sale)*, No. 17; *Punjab Courts Act (XVIII of 1884)*, No. 1 and I, 248.

(172) S. 305—See No. 152, *supra*.

Civil Procedure Code (Act XIV of 1882).
—(Continued).

(173) S. 306, *Failure to deposit purchase-money under, effect of, on the sale in execution.*

Failure to make the immediate deposit required by S. 306 of the Code is not an indispensable condition for the validity of the sale but constitutes a mere irregularity in the conduct of it. The section itself distinctly refers to the purchaser as the person who should make the deposit, and reference to him as purchaser implies that there has been a sale. If, however, the officer conducting the sale neglects to demand the deposit immediately and the purchaser does not pay it, and if the property is not put up again for sale, it ought to be held that there has nevertheless been a valid sale in execution of the decree, the failure to pay the deposit amounting only to an irregularity in conducting the sale. **Raman Chetty v. S.M.R. M. Olagappa Chetty**, 3 L.B.R. 225.

HARTNOLL, J.

References:—5 A. 316, 16 C. 33, 14 M. 227, 7 C. 337, 5 B. 575 & 12 M. 454, R.

(174) Ss. 306, 311—Execution of decree—Sale in execution—Non-payment of required portion of purchase-money at date of Sale—Irrregularity.

Held, that the fact that an auction purchaser at a sale held in execution of a decreed did not pay the 25 per cent. of the purchase-money required by S. 306 of the Code of Civil Procedure at the time of the sale was a mere irregularity, which would not affect the validity of the sale, unless it could be shown that substantial injury was thereby caused to the judgment-debtor. **Ahmad Bakhsh v. Lala Prasad**, A.W.N. (1905), 263 = 28 A. 238.

BANKERJI and RICHARDS, JJ.

Reference.—5 A. 316, declared to be no longer law.

(175) S. 310 A—Attachment—Private sale—Court sale—Application to set aside Court sale.

S. 310 A of the Code is applicable to a purchaser subsequent to attachment and prior to sale under that attachment.

Where there has been a subsequent sale following on the attachment, a person answering this description is one whose immovable property has been sold under Chapter XIX of the

Civil Procedure Code (Act XIV of 1882).
—(Continued).

Code. Mulchand Dagdu v. Govind Gopal Kulkarni, 8 Bom. L. R. 578=80 B. 575.

SIR LAWRENCE JENKINS, C. J., and BEAMAN, J.

- (176) S. 310 A—General Clauses Act (X of 1897, S. 10)—Deposit of money by mortgagee more than thirty days after sale of property in execution of decree—Money tendered on first day after opening of Court after vacation—Limitation.

An application under S. 310 A of the Code, by a mortgagee of certain property which had been sold on September 20th, 1905, was made a few days after in the same month.

The Court was closed all through October on account of the vacation. On the 1st of November, the applicant tendered Rs. 477-8-0. The tender was retained by the Court officials till the next day, November 2nd, when it was returned to the applicant because he had offered too much, the amount due being only Rs. 345-5-0, and because he had given an incorrect number of the suit and had not entered the date fixed for hearing, which was not provided for in the form of tender.

The Court refused to grant the application on the ground that the money had not been deposited within thirty days of the date of sale and that the provisions of Ss. 5 and 6 of the Limitation Act did not apply.

Held, that, having regarded to the provisions of S. 10 of the General Clauses Act (X of 1897), the money was tendered within time. **Radhe Lal v. Shree Prasad**, 9 O. C. 214 (B.)

SCOTT and WELLS, J. CS.

Reference.—19 A. 140, R.

S. 310 A—I, 249 and 250.

- (177) Ss. 310 A, 622—Execution of decree—Application to set aside sale—Who have a right to apply—Revision.

A mortgagee sued for sale on his mortgage imploding, besides the mortgagee, two persons, who claimed a title to the mortgaged property adverse to the mortgagee. In that suit, it was decided that the property, the subject of the mortgage in suit, belonged to the mortgagor and not to the other defendants. The plaintiff, mortgagee, obtained a decree for sale and caused the mortgaged property to be sold by auction. The defendants, other than the mortgagor, applied to have this sale set aside, under S.

Civil Procedure Code (Act XIV of 1882).
—(Continued).

810 A of the Code of Civil Procedure, but their application was rejected, and they then sought, in revision, to get this order reversed.

Held, by BANERJI, J.—That the defendants, applicants, were not entitled to make an application under S. 310 A of the Code, they not being judgment-debtors whose property had been sold.

Per RICHARDS, J.—Whether or not the applicants were entitled to make the application which they did make (and they possibly were so entitled) the Court below did not fail to exercise a jurisdiction vested in it by law nor did it act in the exercise of that jurisdiction illegally. Its order was, therefore, not open to revision. **Ram Singh v. Balig Ram**, A.W.N. (1905), 193-2 A.L.J. 711 = 28 A. 84.

BANERJI and RICHARDS, JJ.

Reference.—11 I.A. 287, *Refd. to*.

- (178) S. 311—See Nos. 124, 167, 174, *supra*. and I, Act VIII of 1885 (Bengal Tenancy), Nos. 38 and 39.

(179) Ss. 311, 312, 313—Sale in execution of a certificate under Act I of 1895 [(B.C.) Public Demands Recovery]—See Act I of 1895 (BENGAL), No. 7, 3 C.L.J. 235.

- (180) Ss. 311, 583 and 647—Restitution of possession of property taken in execution of decree—Order of appellate Court setting aside dismissal of objection to sale, restitution of possession of property by Court under—Execution of decree.

The property of the respondents was brought to sale in execution of a mortgage and was purchased by the appellant (decree-holder). The respondents' objections under S. 311, Civ. Pro. Code, were disallowed by the Subordinate Judge; on appeal, the Court of the Judicial Commissioner held that he ought to have enquired into the question whether a certain mistake in the proclamation had deceived intending bidders, set aside the order, and directed the Subordinate Judge to restore the application under S. 311 to the pending file and dispose of it according to law. In the meantime, the Subordinate Judge had passed an order confirming the sale, had given the appellant a certificate of sale and had placed him in possession of the property. The respondents, on the strength of the order of the Judicial Commis

Civil Procedure Code (Act XIV of 1908).

—(Continued).

sioner's Court, applied to the Subordinate Judge to put them back into possession of the property.

Held, that S. 588 read with S. 647 of the Civ. Pro. Code, provided for restitution of possession under orders passed in appeal, which did not amount to decrees, that the Subordinate Judge had power to restore the respondents to possession; and that the effect of the order of the Judicial Commissioner's Court, setting aside the dismissal of the respondents' objections, being to put the parties back to the stage at which the objections were disallowed, the Subordinate Judge was right in doing so. **Raja Rampal Singh v. Lal Ramesh Singh**, 9 O.C. 101.

CHAMBER and WELLS, J. CS.

(181) S. 312—See No. 179, *supra*, and I, 251; also, I, Act II of 1901 (N.W.P.), No. 16; and Practice (High Court), No. 4.

(182) S. 313—See No. 179, *supra*, and I, 251 and 252.

See 313 and 315—I, 252.

(183) S. 315—Right of suit—Parties.

S. 315, C.P.C., is only an enabling section and not prohibitive of an independent action in a Civil Court (a).

A suit was brought by an auction-purchaser for the recovery of purchase-money from the decree-holder, who had received it, on the ground that the judgment-debtor had no title to the property sold.

Held, that the suit was not barred by the provisions of S. 315, C.P.C.

That the judgment-debtor was not a necessary party. **Surendra Nath Ghose v. Beni Madhab Misra**, 10 C.W.N. 274.

MACLEAN, C.J., and CARPENTER, J.

Reference.—32 C. 332, *Refd. to* by MACLEAN, C.J.

(184) S. 315, suit under, cognizable by a Provincial Small Cause Court—See SMALL CAUSE COURTS, PROVINCIAL (ACT IX OF 1887), No. 5, 8 Bom. L. R. 860.

(185) S. 315—Suit for refund of purchase-money—Sale in execution—Warranty of title—Failure of consideration—Suit after confirmation of sale, maintainability of.

If a party purchases, at a sale in execution, with full knowledge of the true state of things,

Civil Procedure Code (Act XIV of 1908).

—(Continued).

and knowing that the title offered is defective, a claim to be relieved from the consequences of his purchase cannot be listened to (a).

A fortiori where a purchaser had allowed a sale, by the Court to him, to be confirmed and the purchase-money to be paid over to the judgment creditor, he cannot be allowed to succeed in a suit for the recovery of that purchase-money.

Before a suit for the refund of purchase-money can be maintained, two events must occur—first, it must have been found that the judgment-debtor had no saleable interest and, secondly, the purchaser must be deprived of the property (b). A suit for the return of purchase-money will be maintainable, where there has been a total failure of consideration.

The procedure under section 315 of the Code is by summary application within a limited time, and not by suit. So, where a purchaser, at a Court sale held in execution of a decree, purchased the property and the sale was confirmed, but he subsequently succeeded in establishing his title to the property, in a suit under S. 288 of the Code, and then sued for the refund of his purchase-money, *held*, that the suit could not be maintained.

There is no warranty of title in sales under a decree of Court. **Sumer Chand v. Wahid Hussain Khan**, 8 A.L.J. 819=A.W.N. (1906), 310.

STANLEY, C.J., and BURKITT, J.

References:—(a) 5 I.A. 116, R. (b) 22 B. 783, R.

(186) S. 316—Attachment of decree, after sale but before confirmation—Right of attaching creditor to have sale confirmed.

When a person, who had obtained a decree, purchased immovable property at an auction sale held in execution of the same, but before the sale was confirmed and satisfaction of the decree entered in the record, the decree was attached by a judgment-creditor of the decree-holder,

held that the effect of the attachment was to place the attaching creditor in the position of the decree-holder so as to entitle him to have the sale confirmed under S. 316 of the Code, and to take out a certificate of sale. **Goharia Rudrami Koer v. Ram Partap Mull**, 11 C.W.N. 158.

HARRINGTON and PRATT, JJ.

Civil Procedure Code (Act XIV of 1908).
—(Continued).

S. 316—I, Proclamation, No. 33.

(187) *S. 317—Certified purchaser—Interpretation.*

The words "certified purchaser" in S. 317, include the person standing in the shoes of the Court purchaser: **Hari Govind Joshi v. Ramchandra Narayan**, 8 Bom.L.R. 878.

ASTON & HASTON, JJ.

References:—8 M. 511, 21 A. 196, 26 C. 950 & 14 M. I. A. 496, R.

S. 317—I, Act I of 1895 (Bengal), No. 2, and I, 353.

(188) *S. 318—See No. 125, supra and I, Penal Code, No. 2.*

(189) *Ss. 318, 344—Purchaser at Court-sale of share of an undivided co-parcener, right of, to institute suit for partition—S. 344 no bar to such suit.*

The only right acquired by the purchaser, at a Court sale, of the share of one member of an undivided Hindu family, is a right to effectuate the sale by a suit for partition of the entire joint-property of the family and the delivery over to him (the purchaser) of what might be allotted to the share of the said member at the partition. In such cases, it is not competent for the Court on a mere application for execution by the purchaser, to enforce his right by an order for partition. No orders, therefore, of the kind contemplated by S. 318 of the Code can be passed on such applications.

Nor is S. 344 a bar to the purchaser maintaining a separate suit enforcing partition and delivery of the share purchased in execution. **Yelumalai Chetti v. Srinivasa Chetti**, 29 M. 294.

SUBRAHMANYA AYYAR and BENSON, JJ.

(190) *S. 320—Execution of decree—Property to be sold ancestral in part only—Transfer to Collector—(Local Government, Notification No. 671 of August 31, 1880.*

Held, that, where the Civil Court is satisfied that the land, which is ordered to be sold or any portion of it is ancestral, it should transfer the decrees for execution to the Collector so far as regards ancestral land only. **Ahmad Ghaus Khan v. Rai Bahadur Sahu. Late. Parshad**, A.W.N. (1900), 143 = 8 A.L.J. 423 = 23 A. 631.

STANLEY, C. J. and BANERJI, J.

Civil Procedure Code (Act XIV of 1908).
—(Continued).

(191) *S. 320—Suit to confirm a sale—powers of Assistant Collector to set aside his order—irregularity in sale.*

It is the duty of a Judge to set aside an order, which he would not have passed had he been informed of the true state of affairs. Where an Assistant Collector was asked by a person, who alleged himself to be a decree-holder, to postpone a sale and did postpone it and a few hours later, on being informed that the applicant was not entitled to make the application, set aside his former order and held the sale, held, that he was justified in setting aside his former order and the sale was not illegal merely for that reason. **Wasir Ali v. Janki Prasad**, 8 A.L.J. 458 = A.W.N. (1906) 183 = 28 A. 671.

STANLEY, C.J., and KNOX, J.

(192) *S. 320—Decree—Execution—Execution transferred to Collector—Partial execution—Application for instalments—Limitation Act (XV of 1877), Art. 175—See Act XVII of 1879 (DEKHAN AGRICULTURISTS RELIEF ACT), No. 3, 8 Bom. L.R. 968.*

S. 320—I, 354.

(193) *S. 326, proposal by Collector for stay of sale under, disapproval by Civil Court of, procedure on.*

The scheme for satisfaction of a decree proposed by the Collector, under S. 326 of the Code, must provide for such satisfaction within a reasonable period, by the proposed temporary alienation or management of the land concerned; and when the Collector does not submit a scheme providing for satisfaction in the manner indicated above, the Civil Court ought to pass orders for the sale of the property itself. **Jai Bhagwan v. Buali Bakh**, 63 P. R. 1906 = 121 P.L.R. 1906.

CLARK, C.J.

Reference.—9 C. 260, B.

(194) *Ss. 329, 330, 331, 334, 335—Claim by judgment-debtor, if maintainable—Claim by person in constructive possession through tenants—"Possession" and "Dispossession," meaning and scope of—Enquiry, scope of—*

S. 335 of the Code has to be read with S. 334.

Civil Procedure Code (Act XIV of 1882).

—(Continued).

The judgment-debtor is not competent to make an application under S. 335 of the Code, which refers to resistance or obstruction by, or the dispossession of, a person other than the judgment-debtor.

The term 'possession' in S. 336, as in other similar sections of the Code, is not used in a restricted sense, as relating to a mere tangible or physical possession, but includes constructive possession, or possession in law, by receipt of rent or otherwise (a).

The Court has the same jurisdiction in a case of dispossession, whether the person deprived of possession was in physical occupation or symbolical possession, as it has in a case of resistance or obstruction by a person either in actual or constructive possession; and a person who alleges that he was in possession through his tenant, who had been ousted as the judgment-debtor from the land by the delivery of possession to the purchaser, is entitled to make an application under S. 335 of the Code as to that extent his own possession has been interfered with and he himself has been dispossessed within the meaning of the section; but, although he may not be incompetent to apply under S. 335 of the Code, merely by reason of the fact that the claims to have been in constructive and not actual possession, he cannot get any relief under that section, inasmuch as he cannot be placed in actual possession, which, according to his own allegation, he never enjoyed before, and, on the other hand, he cannot be restored to possession through the person whom he alleges to be his tenant, as in that case, it would be practically restoring the judgment-debtor of possession in contravention of the provisions to Ss. 334 and 335 of the Code. **Brajabala Debi v. Gurudas Mandal**, 3 C.L.J. 298 = 33 C. 487.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 11 W.R. 191; 15 W.R. 70; 20 W.R. 373; 22 W.R. 123; 18 W.R. 87; 25 B 478 and 27 M. 67, *Itfd. to and F.*, 1 C.W.N. 343 and 30 C. 710, *Expl. and D.*

(195) S. 330, appeal against decree in suit under, stamp-duty payable on—See COURT FEES ACT, No. 1, 29 M. 172 and No. 194, *supra*.

(196) S. 331—See No. 194, *supra*.

(197) S. 331—Adverse possession.

Vishnu (husband of defendant) sold certain lands to *Vithal* on the 1st June, 1830; and, on

Civil Procedure Code (Act XIV of 1882).

—(Continued).

the 21st August, 1889, *Vishnu* executed in favour of the latter a *Kabuliya* for the land, which was to expire on the 20th March, 1890. From this date, *Vishnu* was adversely in possession of the lands. In 1893, *Vithal's* sons sold the two-thirds of the property to plaintiffs, who sued them and obtained a decree for possession of the two-thirds of the property. In execution of this decree, the plaintiffs were obstructed by defendants, who had stepped into the possession of the property at *Vishnu's* death in 1898. The plaintiffs then, on the 23rd December, 1901, adopted proceedings against the defendant under Chapter XIX (H) of the Civil Pro. Code. On the 26th July, 1902, their claim was numbered and registered as a suit, under S. 331 of the Code. The lower appellate Court dismissed the suit holding that it was time barred.

Held, that the suit was not barred by limitation, since the 26th July, 1902, was not the crucial date; the 12 years of adverse possession expired in March, 1902, but, prior to that, proceedings had been taken under division H of Chapter XIX of the C.P. Code, 1882. **Krishnaji Bappaji v. Kashibai**, 7 Bom. L.R. 667 = 30 B. 115.

JENKINS, C.J. and ASTON, J.

S. 331—I, 254.

(198) Ss. 331, 244—Obstruction, to execution of decree, by a person other than a judgment-debtor—Ss. 244—Applicability of—

A person, against whom no decree was passed, is not a judgment-debtor. And, when obstruction to the execution of a decree is caused by any person other than the judgment-debtor, the decree-holder's application to remove the obstruction should be registered as a suit under S. 331. S. 244 does not apply to such a case. **Jathavedan Nambudri v. Kunju Achan**, 16 M. L. J. 433.

SUBRAHMANIA IYER and MILLER, JJ.

References.—22 M. 161, *not F.* & 23 M. 301, *D.*

(199) S. 334—See No. 194, *supra*.

(200) S. 335—See No. 194, *supra*.

(201) S. 336—Decree—Execution—Surety guaranteeing payment of judgment-debt—Execution against surety, when proper—Remedy by suit—Estoppel.

In the course of the execution of a money decree, the judgment-debtor was arrested and

Civil Procedure Code (Act XIV of 1932).
—(Continued).

brought before the Court. Thereupon the respondents who were not parties to the proceeding put in a surety bond covenanting to pay the decretal amount in the event of the judgment-debtor not paying it within a month, and stipulating that, if they failed to pay, "the decree-holder would be at liberty to realise the amount by auction sale of their moveable and immoveable properties and by arresting them." The judgment-debtor not having paid the money within a month as stipulated, the decree-holder sought to execute the decree against the sureties, who came in and applied for two month's time to pay in the decretal amount and time was allowed. No payment was however made and the decree-holder applied for execution and had one of the sureties' property sold. The sale was subsequently set aside. On a fresh application for execution against the sureties, they objected that no execution could be levied against them and the decree-holder ought to institute a separate suit.

Held—That although the proper course for the decree-holder in such a case would be to institute a separate suit against the sureties, still, having regard to the agreement that was come to and the conduct of the parties in the previous proceedings it ought to be taken that the sureties had waived their right to insist upon a separate suit being brought against them (a). **Kasimuddi Patari v. Fauzdar Khan**, 10 C.W.N. 880 = 4 C.L.J. 311.

GHOSE and CASPERSZ, J.

References.—(a) 8 C.W.N. 672, 2 I.A. 219, *relied on*.

(202)-S. 336—Application for execution against surety, when judgment-debtor's application for insolvency is pending—See LIMITATION ACT, No. 133, A.W.N. (1906), 54.

Ss. 336 and 344—I, 255.

(308) Ss. 336, 337, 344 and 357—Arrest of judgment-debtor in execution of decree pending his application for insolvency in other execution-proceedings—Debt scheduled in application for insolvency, arrest of judgment-debtor before his discharge, for—Order to furnish security in case of judgment-debtor, arrested in execution of a decree, but who has applied for insolvency.

Held, per WELLS, A.J.C.—that the mere fact that the judgment-debtor has made an applica-

Civil Procedure Code (Act XIV of 1932).
—(Continued).

tion for insolvency in execution of one decree against him cannot debar other decree-holders from causing his arrest in execution for the decrees until he has been actually discharged by the insolvency Court under S. 357 of the Code; and that a decree-holder is not debarred from pressing his claim by causing the arrest of the judgment-debtor merely because his debt has been scheduled in an application to be declared an insolvent.

Held, per SCOTT, J.C., that the provisions of Ch. XX of the Code have no application to a case in which a judgment-debtor is brought before a Court under arrest in execution of a decree for money; and that, when a judgment-debtor has already applied to a proper Court to be declared an insolvent, under S. 344 of the Code, it becomes unnecessary to require him to furnish security except for his appearing before the Court when called upon. **Suraj Prasad v. Babu Bishambhar Nath**, 9 O.C. 42 (B.)

SCOTT and WELLS, J. CS.

(204) S. 337—See No. 203, *supra*.

S. 337 A—I, 255.

(205) S. 344—See No. 203, *supra*, and I, 255.
Ss. 350 and 359—I, 256.

(206) Ss. 351 and 352—Rule of *damdapat*, when applicable—*Damdapat*, if applicable in insolvency proceedings—Practice.

The rule of *damdapat* (a) exists only so long as the contractual relation of debtor and creditor exists, but not when the contractual relation has come to an end by reason of a decree.

Proof of a claim in insolvency amounts to a decree and the rule of *damdapat* would not apply to a claim so proved. Moreover, the uniform practice of this Court has been not to apply the rule of *damdapat* in insolvency proceedings. In the matter of **Harilal Mallek**, 10 C.W.N. 884 = 33 C. 1269.

WOODROFFE, J.

Reference.—(a) 26 M. 622, R.

Ss. 351, 355, 356 and 357—I, 256.

(207) S. 352—See No. 206, *supra*.

(208) S. 357—See No. 203, *supra*.

(209) S. 359—Power of Court to entertain application from creditor under, after dismissal of petition for declaration of insolvency.

Civil Procedure Code (Act XIV of 1908).
—(Continued).

The fact that a Court dismisses an application under S. 348 of the Civ. Pro. Code, for declaration of insolvency does not deprive the Court of the jurisdiction in the matter, so as to disempower it to entertain a subsequent application from the creditor under S. 359 of the Code. Consequently, the Court has jurisdiction to entertain, and act upon, such an application from the creditor, though made long after the dismissal of the prior petition under S. 348. *Held*, also, the object of S. 359 being punishment of an offence, it is quite fitting, suitable and legal that the punishment should be by imprisonment either simple or rigorous, in the Criminal Jail. *Shamaung v. T. A. Agamberan Chetty*, 8 L.B.R. 172.

IRWIN, J.

Reference:—14 A. 145, R.

Ss. 361 and 367—*See, I, Custom (Punjab), No. 7.*

(210) *Ss. 362, 363, 368, 528*—*Suit, right of—Substitution, application for.*

A, B and C, members of a joint Hindu Mitakshara family applied for registration of their names under the land Registration Act. The application was opposed and refused in 1888. In 1894, they sued for declaration of title and obtained a decree. During the pendency of the appeal against such decree, A died and more than six months after, the appellant applied to have B and C noted as legal representatives who had taken the estate by survivorship.

Held, (i) that the application for substitution was governed by S. 362, Civ. Pro. Code, and not S. 368. S. 362 is not limited in its application to cases in which the right of suit survives against the surviving defendants by reason of some circumstance antecedent to the suit. *Shyamanand Das v. Raj Narain Das*, 4 C. L. J. 508.

RAMPINI & MOOKERJEE, JJ.

(210-a) S. 368—*See No. 210, supra.*

Ss. 365, 366 and 371—*I, 257.*

Ss. 365 and 379— “ ”

(211) *Ss. 365, 403, 407, 410 and 413*—*Pauper right to be declared, whether personal—Death of the applicant—Substitution, right of the heir.*

Civil Procedure Code (Act XIV of 1908).
—(Continued).

The right to obtain permission to sue as a pauper is only a personal right. So on the death of an applicant, praying for such permission, his legal representative cannot come in as such and ask to be substituted in his place. There is a marked distinction between a right to sue and a right to make an application for permission to sue as a pauper, and this distinction is clearly indicated in S. 413 of the Code. The right to make such an application is obvious a personal right and cannot survive in the representative who may or may not be a pauper himself. *Lalit Mohan Mandal v. Satish Chandra Das*, 4 C.L.J. 284 = 38 C. 1168.

GHOSE, AG. C.J. and CASPERAS, J.

(212) S. 367—*Dispute as to who is the legal representative of a deceased plaintiff—Order admitting a person to be legal representative for the purpose of prosecuting the suit—effect of such order.*

S. 367 empowers the Court, in a case where a dispute arises as to who is the legal representative of a deceased plaintiff, to appoint a legal representative for the purpose of prosecuting the suit, but the appointment of such legal representative is not a determination of any issue which is properly raised in the suit, and particularly (as, for example, in a suit for partition of family property) such a vital issue as whether the deceased plaintiff was joint with, or separate from, the rest of his family. *Parotam Rao v. Janki Bai*, A. W. N. (1905), 206 = 28 A. 109.

STANLEY, C.J. and BURKITT, J.

(213) S. 367—*Abatement of suit—Appeal—Revision.*

Held, that where after the death of a plaintiff the Court, on the application of his widow to be brought on the record in place of her deceased husband, held that the right to sue not having survived to the applicant, she could not be brought on the record as a legal representative of the deceased and ordered the suit to be dismissed as having abated, the proper remedy for the widow was to appeal against that order and not to apply for revision of the same (a). *Muhammad Patraj Kuar v. Bhadiya Jank Parshad Singh*, 9 O. C. 254.

EVANS and GRIFFIN, J. CB.

References:—(a) 18 M. 496, 27 B. 162 and 10 B. 220, R.

S. 367—I, 258.

Civil Procedure Code (Act XIV of 1908).
—(Continued).

- (214) *Ss. 367, 588 (18)*—Order for abatement—*Suit not a decree but an order under S. 367, C.P.C. appealable as such under S. 588 (18) of the Code.*

Where a Court dismisses the application of a person claiming to be brought on the record as a deceased plaintiff's legal representative, deciding that the right to sue does not survive, the decision is to be regarded as an order under S. 367, C.P.C., and as such appealable under S. 588 (18) of the Code (a) but it is not a decree nor appealable as such (b) for the reason that until a legal representative has been allowed to come in, there is no suit which can be decided on the merits and, therefore, no possibility of a 'decree' satisfying the definition of that term in S. 2 of the Code (c). *Tejnath Dube v. Loknath Dube*, 2 N.L.R. 7.

DRAKE-BROCKMAN, A.J.C.

Reference.—(a) 18 M. 496, *F.* (b) 17 A. 172 and 27 M. 112, *F.* (c) 27 A. 162, *Ited. to.*

- (215) *S. 368*—*Appeal—Joint and several liability of the respondents—Non-substitution of the representatives of a deceased respondent, effect of—*

On the preliminary objection, taken on behalf of the respondents in this appeal, that it should abate on account of appellant's failure to get the legal representatives of a deceased respondent substituted in the record under S. 368 of the Code, it was held, that, since the liability of the respondents in the present case was joint and several, the death of one of them without his legal representatives being substituted in his place could not exonerate the others from liability and the appeal would abate only so far as the deceased respondent was concerned (a). *Joy Gobind Laha v. Monmatha Nath Banerjee*, 38 C. 580.

MITRA and GRIFF, JJ.

Reference.—(a) 22 A. 430, *Distd.*

- (215-a) *S. 368*—See No. 210, *supra*.

- (216) *S. 368*—*Death of one of several defendant-respondents—Failure of plaintiff-appellant to substitute legal representatives within time—whether appeal abates altogether.*

The application by the plaintiff-appellant in this case, to substitute some of the respondents as the legal representatives of a deceased defendant, was barred by time, when it was made,

Civil Procedure Code (Act XIV of 1908).
—(Continued).

under the Limitation Act and under S. 368 of the Code of Civil Procedure. The appeal had, therefore, to abate and it had to be considered whether it abated wholly or only as against the respondents sought to be brought in after time: *Held*, since the suit was one for possession of land, which was in the joint possession of the two defendants in the case, there was no right of suit against one of them alone and the appeal, therefore, abated altogether. *Shive Bin v. Ma Thela*, 8 L. B. R. 109.

INWIN, J.

References.—22 A. 430, 22 B. 716 & 26 B. 208, *R.*

- S. 368—I, 258.*

Ss. 368 & 588—, 259.

S. 372—I, 250.

- (217) *S. 373*—*Withdrawal of suit for declaration without obtaining leave to bring another suit, suit for possession by reversioner after—Institution of fresh suit—Subsequent suit for the same matter.*

Held, that, where a reversioner withdraws his suit for a declaration without obtaining leave to bring another suit under S. 373, of the Code, his subsequent suit for possession will not be barred under the provisions of that section. *Jangl Singh v. Durga Singh*, 9 O. C. 104.

CHAMBER, J. C.

References.—21 C. 265, 21 M. 85, 2 A. L. J. 59, *R.*

- (218) *S. 373*—*Court's power to extend time for payment of costs of suit withdrawn.*

Plaintiff withdrew a suit with liberty to bring a fresh suit, under S. 378, C.P.C. The Court granted the permission on condition of plaintiff's paying the costs of the suit to defendant within a time fixed. It being impossible for the plaintiff to pay such costs within the time stipulated, he applied, after the expiry of the time fixed by the Court, for an extension of time for the payment of the costs. The Court of first instance granted the extension. *Held*, the Court of first instance exercised a sound discretion in extending the time. *Peria Muthirian v. Karappanna Muthirian*, 29 M. 370.

SUBRAHMANYA AYYAR and MOORE, JJ.

Civil Procedure Code (Act XIV of 1882).

—(Continued).

S. 373—I, 260.

Ss. 373 and 374—I, 260.

Ss. 373 and 412—I, 261.

Ss. 373 and 582—do do.

(219) S. 375—Compromise, finality of—
Appeal from decree passed on compromise—
Interpretation of compromise, difference
between parties in.

In a suit for partition, the parties, filed a written compromise but when the compromise was put before the Court, there arose, on the objection of the defendant, a dispute between them as to the interpretation of one of its clauses upon which the Court passed an order to the effect that, as there was a dispute as to the interpretation of the compromise, it could not be approved and the Court then proceeded to try the case. Some evidence in the case was then recorded and the case was adjourned to a future date for the hearing. On the date fixed for the hearing, one of the parties, the plaintiff, stated before the Court that he had settled the points of difference and he agreed to the interpretation put upon the clause by the defendant. The Court, thereupon, passed a decree based on that compromise.

Held, on appeal that there being no agreement between the parties as to the interpretation of the compromise when it was originally filed, there had been no real and genuine adjustment of the case before the Court and in fact no final compromise between the parties upon which the Court could proceed to decide the case. If the Court wished to act upon the compromise according to the amendment originally suggested by the defendant and subsequently agreed to by the plaintiff, a fresh compromise amending those terms should have been put in and verified by all the parties concerned.

Held, further, that there being no decrees passed in the case within the meaning of S. 375, Civil Procedure Code, inasmuch as there had been no real agreement between the parties, the decrees so passed was open to appeal and could not be considered as final(a). **Ram Lal v. Balak Ram**, 9 O.C. 365.

EVANS & GRIFFIN, J.CS.

References:—(a) 29 M. 104, 9 M. 108, 16 B. 202, 1 C.W.N. 597, 5 C.W.N. 877 & 7 C.W.N. 419, R.

Civil Procedure Code (Act XIV of 1882).

—(Continued).

(220) S. 375—Suit on bond for money-decree—Charge created by compromise—Relief claimed under compromise different from relief claimed in plaint—Court's powers in granting relief.

The claim of the plaintiff in the plaint was only for money due under bonds which gave no charge on the defendant's property, but the defendants agreed to such a charge as one of the terms of the compromise, which they entered into with the plaintiff. The Court passed a decree in terms of the compromise. Subsequently, the defendants questioned the validity of the charge on the ground that the plaintiff prayed only for a money decree in the plaint, without claiming any charge and that it was, therefore, not competent to the Court to give a decree creating a charge, even though they agreed to such a charge, *Held*, there was nothing in principle or in the language of S. 375 of the Code to preclude the Court from embodying in the decree the charge which the parties agreed to as security for the debt or to restrict the relief to be granted in accordance with the compromise to what is prayed for in the plaint or less.

Joti Kuruvetappa v. Sri Devandra Kirti Buttarakappatracharia, 16 M. L.J. 354.

SUBRAAMANIA AIYAR & BENSON, JJ.

References:—18 M. 414, 22 M. 214, commented on.

(221) S. 375—Consent decree in terms of the compromise—Forfeiture clause in the decree—Court can relieve against forfeiture.

When a plaintiff is seeking to enforce, by original suit, a right to forfeiture contained in a consent decree, in the terms of a compromise whereby the status of landlord and tenant is established between the plaintiff and defendant, the Court, in the exercise of its equitable jurisdiction, is not precluded from granting such relief against forfeiture as it might have granted, had the status arisen from contract or custom. **Krishna Bai v. Hary Govind Kulkarni**, 8 Bom. L.R. 813 (F.B.)=1 M.L.T. 370.

JENKINS, C. J. and ASTON, BEAMAN & HEATON, JJ.

References:—10 B. 435, 24 M. 205, 26 M. 31, R.

Civil Procedure Code (Act XIV of 1882).
—(Continued).

(222) S. 375, whether a proceeding under S. 93 of the Bengal Tenancy Act is a suit within the meaning of—See ACT VIII OF 1895 (BENGAL TENANCY), No. 34, 4 C. L. J. 564.

S. 375—I, 261.

S. 380—I, 262.

Ss. 383 and 386—I, 264.

Ss. 383 and 506—I, 265.

(223) S. 396—Suit for partition of immovable property—Commissioner appointed to make partition—Court not competent to modify Commissioner's report.

Where, in a suit for partition of immovable property, a Commissioner has been appointed under S. 396 of the Code to ascertain the shares of the parties, the Court, when passing its final decree, must either accept or reject the report of the Commissioner, but is not competent to modify it. **Janki Prasad v. Gauri Sahai**, A. W. N. (1905), 188=2 A. L. J. 709=28 A. 75.

STANLEY, C. J. and BURKITT, J.

Reference.—A. W. N. (1898), 45, Refd. to.

(224) S. 396—Decree in a partition suit—Application for division by metes and bounds whether one for execution of the decree—Limitation Act, Sch. II, Arts. 178, 179, applicability of—Right of judgment-debtor to plead bar by limitation of a previous application ordered without objection—Res judicata.

The decree of the Munsiff, in a suit for partition by metes and bounds, was defective as a final decree for partition, since the Munsif, who could have indicated, in the decree, the exact portion of the share, which was to be given up to the plaintiff, omitted to do the same and the decree did not specify such share by metes and bounds. *Held*, until the exact position of the plaintiff's share was indicated and a final decree passed, accordingly, as contemplated by S. 396 of the Code, there was no decree, which the Court could execute; and applications towards effecting a partition before such final indication would constitute proceedings in the suit itself and not in execution of the decree as pointed out in **Dwarka Nath Misser v. Barinda Nath Misser** (a). The applications above mentioned were not applications to which the Limitation Act would be a bar since the defect in the decree to cure which they were made was one which the Court itself was bound to

Civil Procedure Code (Act XIV of 1882).
—(Continued).

cure without any formal application by the parties (b). *Held*, also, where an order for execution has been made by a competent Court on a previous application for execution, after due service of notice on, and without any objection by, the judgment-debtors, it could not afterwards be pleaded on a subsequent application that the previous application was barred (c). **Durga Das v. Fagir Chand**, 47 P.R. 1906.

ROBERTSON and CHITTY, JJ.

References.—(a) 22 C. 425, F. (b) 28 M. 127, F. (c) 8 C. 151, 6 B. 54, 24 A. 282 and 24 M. 669, It.

(225) S. 396—See No. 20, *supra*.

S. 396—I, 266 and I, Stamp Act (II of 1899), No. 2.

(226) Ss. 397, 649—Commission—Additional costs, order for, not entered in decree—If enforceable.

When, after the issue of a commission under Ch. XXV of the Code, it is found that the work is in excess of the amount paid in for the costs of the commission, and that the party, at whose instance the commission was issued, is not willing to pay, the only way in which the additional costs can be realised is by making the amount costs of the suit and entering the same in the decree.

An order for depositing additional costs when not entered in the decree cannot be enforced. **Tadhin Proshad Singh v. Sardar Coomar Narayan Singh**, 10 C.W.N. 234.

RAMPINI and CASPEREZ, JJ.

Chap. XXVI—I, 266.

(227) Ss. 401, 622—Suit in forma pauperis—Application to file suit in forma pauperis—Possession of property by the applicant of value less than the amount required in Court fee—High Court—Revision.

The plaintiff applied to file a suit in forma pauperis on a claim which required the Court-fee of Rs. 1,775 on the plaint. The Subordinate Judge finding that she had property of the value of Rs. 1,600, determined that she was not a pauper. The plaintiff applied to the High Court.

Held, (1) that the High Court had jurisdiction to interfere, under S. 622, of the Code.

(2) That the determination by the lower Court was erroneous, for it was obvious that

Civil Procedure Code (Act XIV of 1908).

—(Continued).

the possession of Rs. 1,600, even if it could properly be taken into account, would not enable the applicant to pay the Rs. 1,775, which was the fee prescribed by the law for the plaint. *Ganga Bai v. Shridhar Annaji Kulkarni*, 8 Bom. L.R. 642.

JENKINS, C.J. and ASTON, J.

(228) *Ss. 401, 622—Application to file a suit in forma pauperis.*

The words "other than his necessary wearing apparel and the subject-matter of the suit" in the explanation to S. 401 of the Code, do not qualify that part of the explanation which requires that the person should not be possessed of sufficient means to enable him to pay the fee prescribed by law, but only the condition that the applicant is not entitled to property worth Rs. 100. *Krishnaji Janardan v. Manohar Sundarrao*, 8 Bom. L.R. 671=30 B. 598.

JENKINS, C. J. and BEAMAN, J.

(229) S. 408—See No. 211, *supra*.

(230) S. 407—See No. 211, *supra*.

(231) S. 410—See No. 211, *supra*.

(232) *S. 411, scope of—Old Civil Procedure Code (Act VIII of 1859), S. 309—suit in forma pauperis—Successful petitioner—Charge of Government for Court-fees—Crown-debt, priority of.*

S. 411 of the Code is an enabling section. Though it indicates the manner in which the Crown may proceed to realise Court-fees of a successful pauper plaintiff, which form a Crown-debt, it does not preclude the Crown or its representative from urging its prerogative and insisting on its right to precedence over all other creditors.

A successful pauper plaintiff attached and sold for her costs certain property, other than the property in suit, belonging to the judgment-creditor. The sale-proceeds were paid into Court. The plaintiff's solicitor applied to have his costs paid out of the sale-proceeds. The Government Solicitor also applied to have his certified Court-fees paid to him out of the fund in Court:

Held—That the Government Solicitor was entitled to precedence and that it was not necessary for him to attach the fund before getting payment (4). *Srimaty Gayanoda Bala Das v. Butte Krishna Das Balaragee*, 10 C.W.N. 857=33 C. 1040.

SALJE, J.

Civil Procedure Code (Act XIV of 1908).

—(Continued).

References.—(a) 5 Bom. H.C.R. 33 (O. C. J.); 1 Bom. 7, 1 A. 396, 2 A. 396, 18 A. 413, 20 M. 457, R.

(233) *Ss. 411, 412—Pauper suit—Compromise of the suit—Withdrawal of the suit—Folliure in the suit.*

Where a pauper plaintiff withdraws from a suit without permission under S. 378 of the Code as the result of a compromise by which he obtains a substantial part of the relief claimed, he fails in the suit within the meaning of S. 412 of the Code. *The Secretary of State for India v. Bhagirathibai*, 8 Bom. L.R. 689 (F. B.)

JENKINS, C.J., ASTON, BEAMAN and HEATON JJ.

References.—15 B. 77 and 18 B. 461, overruled.

(234) S. 412—See No. 233, *supra*.

(235) S. 418—See No. 211, *supra*.

(236) *S. 413—Application for leave to appeal as pauper, effect of, dismissal of.*

The provision in S. 418 of the Code that, on the refusal of a petition to allow a person to sue as a pauper, the applicant shall be at liberty to institute a suit in respect of the same matter, duly stamping the plaint in the ordinary manner, is equally applicable to the case of the dismissal of an application to be allowed to appeal as a pauper, and, consequently, when such an application happens to be dismissed by the Court, the applicant has the further right of presenting, on proper stamps, the appeal sought to be made. *Shaik Buffati v. Kalloo Khan*, 8 L. B. R. 194.

IRWIN, J.

References.—22 B. 849, 2 A. 241 & 26 A. 829, R.

(237) *S. 424—Suit for damages against a public officer—dismissal in toto of claim for damages for separate acts—amendment—notice of suit.*

In a suit for damages against the defendants, who were Police Officers, the plaintiff alleged as follows:—That the defendants induced one S to make a false report against the plaintiff at the Kotwali, where the defendants were stationed, that the defendants then charged the plaintiff with the commission of an offence under S. 454 of the Indian Penal Code, arrest

Civil Procedure Code (Act XXV of 1908).
—(Continued).

ed him and sent him up to the Magistrate for trial, that the plaintiff was acquitted by the Magistrate, and that the defendants then caused S to lodge a false complaint in Court against the plaintiff for an offence, under S. 380 of the Indian Penal Code, and the plaintiff was again acquitted. The plaintiff stated that a cause of action accrued to him when the defendants sent him up for trial and when the complaint was made by S to the Court. He claimed one lumpsum as damages for both. The question for consideration was whether, under S. 424 of the Code, notice of suit should have been given to the defendants.

Held, that¹ if the defendants induced S to make a report or file a complaint they did not act in their official capacity, and, therefore, so far as the report and complaint were concerned, no notice of suit was necessary; but that the other alleged acts of the defendants purported to be done by them in their official capacity, within the meaning of S. 424 of the Code, even if they were acting in pursuance of an illegal conspiracy, and, therefore, the defendants were entitled to notice, under that section, in respect of them.

Held, further, that, having regard to the frame of the suit, no amendment could be allowed but the suit should be dismissed *in toto* (a) **Brij Mohan Lal v. Ali Hussain**, 9 O. C. 275.

CHAMBER & EVANS, J. CS.

References.—(a) 7 C. 409, 26 A. 220, 20 Eq. 626 & 24 C. 584, R.

S. 424—I, Act I of 1895 (Bengal), No. 5,

S. 433—I, 266.

Ss. 425, 52, 53 (cl. c.)—I, 267.

(388) S. 440—Guardian appointed or declared by an authority competent in this behalf—Guardian appointed by the will of a Hindu father.

A Hindu father has the power to appoint by his will a guardian of the person of his minor son.

The clause "a guardian appointed or declared by an authority competent in this behalf," as used in S. 440 of the Code, applies to a guardian appointed or declared by the will of a Hindu father. **Bhuddhal Manji v. Morarji Premji**, 5 Bom. L.R. 522.

SCOTT, J.

Civil Procedure Code (Act XXV of 1908).
—(Continued).

(289) S. 442—Guardian ad litem—Procedure—Appointment of guardian ad litem invalid—Effect of invalidity on decree passed against minor defendant.

The provisions of S. 442 as to the appointment of a guardian ad litem for a minor defendant are imperative, and where those provisions are not substantially complied with, the minor is not properly represented and any decree which may be passed against him is a nullity. **Hanuman Prasad v. Muhammed Ishaq, A.W. N.** (1905), 229 = 2 A.L.J. 615 = 28 A. 187.

STANLEY, C. J. and BURRITT, J.

S. 442—I, 267 and I, Guardian and Ward, No. 2.

(240) S. 457—Guardian ad litem—married woman—Her right to enter into a compromise from the minor defendant—compromise irregular not illegal, when sanctioned by Court.

The appointment of a married woman as a guardian ad litem for a minor defendant is, though a departure from the provisions of the Code of Civil Procedure, a mere irregularity (a).

When a decree had been passed on the basis of a compromise entered into by the guardian ad litem, on behalf of a minor defendant, such guardian being a married woman, with the previous sanction of the Court, and no collusion or fraud between such guardian and the plaintiff was proved, the High Court refused, in a suit by the minor, to set aside the compromise on the ground of the guardian ad litem having been a married woman.

A compromise sanctioned by Court on the part of an infant cannot be set aside by him on any ground which would be insufficient to set aside a compromise between persons *vis à vis* (b). **Kunhi Kutubali Haji v. Kunhi Pathu**, 29 M. 58 = 16 M.L.J. 14.

SUBRAHMANYA AYYAR, OFFG. C.J. and SANKAR NAIK, J.

References.—(a) 30 I.A. 162, *Refd.* to (b) De. G.J. and S. 873 (416), *Refd.* to and F.

(241) S. 457—Guardian of minor plaintiff—respondent—Married woman—Custom—Alienation by father—Necessity for sale established—Consideration for sale higher than the amount necessary to raise.

A minor plaintiff filed a suit, through his mother as his next friend, against his father,

Civil Procedure Code (Act XIV of 1882).
—(Continued).

and the case was decreed. The defendant appealed making the mother as guardian of the minor plaintiff-respondent. A question was raised whether the mother could continue to act as guardian, notwithstanding the provisions of S. 457 of the Civ. Pro. Code. The Chief Court did not consider it necessary to take the matter up of its own motion, when the appellant elected to proceed with the appeal as brought.

Where necessity for sale of ancestral property by a father is established, no declaration should be given in favor of sons that the sale would not affect their interests after the father's death, for the mere fact that the property was sold at a higher price by a small sum than it was necessary for the father to raise. **Wadhawa Mal v. Wadhawa**, 144 P. L. R. 1906.

KENSINGTON & CHITTY, JJ.

(242) S. 462—Minor—Compromise—Leave of Court.

For the exigencies of S. 462 of the Code being properly complied with so as to enable the validity of a compromise, entered into on behalf of a minor, to be maintained, when such compromise is *subsequently* challenged, it must be proved that the attention of the Court was directly called to the fact that a minor was a party to the compromise and it ought to be shown by an order on petition, or in some way not open to doubt, that the leave of the Court was obtained. **Monohar Lal v. Jadu Nath Singh**, 4 C. L. J. 8 (P. C.) = 8 Bom. L. R. 489 = 10 C. W. N. 898 = 9 O. C. 219 = 1 M. L. T. 210 = 16 M. L. J. 292 = 8 A. L. J. 710.

LORD MACNAUGHTEN, SIR ANDREW SCOBLE,
SIR ARTHUR WILSON and SIR ALFRED
WILLS.

(243) S. 462—See No. 140, *supra*.
S. 462—I, 268.

(244) Ss. 462 and 506, et seq—guardian and minor—Arbitration—Authority of guardian to agree to a reference to arbitration on behalf of the minor.

Seemle: that S. 462 of the Code does not apply to proceedings under Chapter XXXVII of the Code. A minor party, therefore, will be bound by the consent of his guardian to refer the matters in dispute to arbitration, if there is no fraud or gross negligence, although

Civil Procedure Code (Act XIV of 1882).
—(Continued).

the Court has not, under the provisions of S. 462, sanctioned the agreement to refer (a). **Hardeo Sahai v. Gauri Shankar**, A.W.N. (1905), 171 = 2 A.L.J. 493 = 28 A. 25.

STANLEY, C. J. and BURKITT, J.

References.—(a) 27 C. 229 and 12. M. 489, F. (245) Ss. 462, 623 and 624—Decree on compromise against a minor, procedure to set aside—Review on the ground of fraud—Decree on compromise against a minor, duty of Court passing—Compromise by guardian without leave of Court—Discovery of new and important matter of evidence.—

Where a decree is regular in itself and, on the face of it, correct, it can only be set aside by a suit. Where the plaintiff seeks to set aside a decree based on a compromise, entered into by his guardian when he was a minor, merely on the ground that the compromise was fraudulent, his only remedy lies in a fresh suit and he cannot revive the previous suit by an application for review (a).

But, where, it is clear upon the face of the judgment or the decree, which is impugned, that it is irregular, and incorrect, and not in compliance with the provisions of the law, the plaintiff can proceed by way of review. Where a Court, passing a decree in terms of a compromise against a minor, did not enquire into the circumstances that led to the filing of the petition of compromise, nor grant any leave to compromise, as required by S. 462, C.P. Code, the decree passed is not in compliance with the provisions of the law and may be set aside on review (b). **Barhamdeo Prasad v. Banarsi Prasad**, 8 C.L.J. 119.

AMIR ALI and PRATT, JJ.

References.—(a) 13 B. 137; (1898) 4 My. and Cr. 215; 6 Ch. D. 297, F. 25 C. 649 and 22 C. 8, R. Observations to the contrary in 6 C. 687; 10 C. 357 and 13 B.L.R. App. 11, *disented from*. (b) 9 C. 810; 8 M. 103 and 17 A. 581, R. 20 A. 98, *doubted*.

(246) S. 463, provisions of, not exhaustive—Unadjudged lunatic, right of, to sue by next friend.

The provisions of chapter XXXI of the Code are not exhaustive, and where a person is admitted, or has been proved, to be, of unsound mind, whether he has been adjudged a lunatic

Civil Procedure Code (Act XIV of 1892).
—(Continued).

under Act XXXV of 1858 or not, he has the right to sue through his next friend, provided that what is done is clearly for his benefit (a). **Shree The v. Tha Kado**, 9 L.B.R. 169.

• ADAMSON, C.J. and Fox, J.

References:—(a) 20 A. 2 & 23 B. 659, *F.* 13 B. 650, *D.*

S. 463—*I*, 269.

• (247) *S.* 486—See No. 100, *supra*.

(248) *S.* 489—See No. 100, *supra*.

(249) *S.* 490—Confirmation of attachment after decree—Starting point of limitation for setting aside *ex parte* decree—See LIMITATION ACT (XV of 1877), No 118, 8 Bom. L. R. 567.

(250) *S.* 490—See No. 100, *supra*.

(251) *Ss.* 491 and 588—Attachment before judgment—Compensation for unnecessary attachment—Appeal.

Held, that no appeal will lie from an order, under *S.* 491 of the Code, granting compensation to a person against whom an attachment has been obtained upon insufficient grounds. **Lok Nath v. Amir Singh**, A.W.N. (1905), 197 = 2 A.L.J. 602 = 28 A. 81.

STANLEY, C.J. and BURKITT, J. #

Reference.—24 M. 62, *F.*

S. 492—*I*, 270.

• *S.* 503—*I*, 270.

Chap. XXXVII—I, Arbitration, No. 8 and I, 271.

(252) *S.* 506—See No. 244, *supra*.

Ss. 506 to 522—*I*, 271.

Ss. 506 and 522—, ,

(253) *Ss.* 508, 514 and 521—Limitation Act, Sch. II, Art. 158—Award made and filed after expiry of time fixed—appeal.

When a suit was referred to arbitration by a Court in compliance with an application of the parties, it fixed a time for the making of the award. The award, however, was made and filed in the Court after the time fixed by it. Neither party had applied for an extension of time nor had any order been made, by the Court itself, for extension, before the expiry of the time fixed. *Held*, that an award made after the expiry of the time fixed by the Court, is *ab initio* void. It cannot be validated by an acceptance thereof by the Court after the expiry, of the time, nor by an order made by the Court,

Civil Procedure Code (Act XIV of 1892).
—(Continued).

for extension of time, after the making of the award, because, when an award has once been completed and delivered into Court, it has no power to grant an extension of time under *S.* 514, C. P.C. (a).

A decree passed on such an invalid award is appealable (b).

Where an award is made after the expiry of the time prescribed by the Court for the making thereof, the Court ought to take judicial notice of its invalidity (c), notwithstanding the fact that neither party has taken any objection thereto. Art. 158 of the Limitation Act is inapplicable to such a case. **Kewal Lodhi v. Balj Nath**, 2 N.L.R. 81.

STANLEY, A.J.C.

References.—(a) 13 A. 300, *PL. M.* 85, *F.* 16 M. 384, 14 A. 343, *R.* (b) 29 B. 285, 16 C. 492, 24 C. 469, 17 B. 357 and 18 A. 422, *R.* (c) 13 A. 300, *F.*

See, also, I, 271.

(253-a) *S.* 514—See No. 253, *supra*.

(254) *Ss.* 518, 522, 588 (26)—Modification of award under *S.* 518—Appeal—Power of appellate Court to enter into question of misconduct or corruption of arbitrator.

An appeal, under *S.* 588 (26) of the C.P.C. is limited solely to the question of the correctness of the order passed under *S.* 518; *S.* 522 of the Code does not allow an appeal from a decree based upon so much of an award as disposes of the matter referred to arbitration. The word 'award' in the last sentence of *S.* 522 means the modified award where the original award is modified. The concluding sentence of *S.* 522 of the Code does not empower an appellate Court to enter into the question of the corruption or misconduct of an arbitrator merely because he has delivered an award, which includes an adjudication on a matter not submitted to him. **Kalu v. Khair Din**, 13 P.R. 1906.

REID, C.J. •

(254-a) *S.* 520—See No. 272, *infra*.

Ss. 520, 525 and 523—*I*, 272.

Ss. 520 and 622—, ,

(255) *S.* 521—See No. 253, *supra*.

Ss. 521 and 522—*I*, 273 & 274.

(256) *Ss.* 521, 588—Award—Objection of award—Award set aside—Appeal.

Civil Procedure Code (Act XIV of 1908).

—(Continued).

Held, that no appeal lies from an order under S. 521 of the Code setting aside an award. *Ganga Prasad v. Kura*, A.W.N. (1906), 64=8 A.L.J. 168=28 A. 408.

STANLEY, C.J. and BURKITT, J.

References.—8 C.W.N. 890, *Folld.* 10 A. 8, *overruled*.

(257) S. 522—See No. 254, *supra*.

(258) S. 522—*Arbitration—Award—Appeal—Application to Court to appoint a new arbitrator*.

Where a party to a suit has agreed to an arbitration and has selected an arbitrator, he cannot ask the Court to appoint another arbitrator. It is only under S. 510 of the Code that the Court can appoint a new arbitrator. *Shiam Sunder Lal v. Bhairon Singh*, A.W.N. (1906), 51=3 A.L.J. 185.

KNOX and AIKMAN, JJ.

Reference.—10 B. 381, F.

(259) S. 522—*Decree made in accordance with an award—Appeal against the decree depends on the validity or otherwise of the award*.

As soon as an award has been made and filed in Court, the powers of the arbitrators come to an end; they become *functus officio*, and it is not open to a dissentient arbitrator to come in, afterwards, and sign the award, nor has the Court any power to allow him to so sign it. The award, if so signed, subsequently, becomes illegal and invalid on that account.

The question, whether, under S. 522 of the Code, an appeal lies against a decree made in accordance with an award, depends upon whether the award itself is valid and legal. The said section pre-supposes a valid and a legal award, and not an award, upon which no decree could be pronounced (a). *Ramesh Chandra Dhar v. Karanamoyi Dutt*, 88 C. 498.

GHOSE and PARCITER, JJ.

References.—(a) 18 A. 300=18 I.A. 55, 28 A. 368, 25 C. 141, R. 29 C. 167=29 I.A. 51, R.

(260) S. 522—*Appeal—Arbitration—Decree in accordance with award—Legality or validity of award—*

In a suit, in which there were several defendants, one of the defendants alone appeared and the others did not enter any appearance at all.

Civil Procedure Code (Act XIV of 1908).

—(Continued).

The plaintiff and the defendant that appeared, applied for a reference of the case to arbitration and the suit was accordingly referred and a decree was passed in accordance with the award. *Held*, the defendants, who did not appear, could not challenge the decree by way of appeal on the ground that they were not parties to the reference and that, consequently, there was no legal and valid award. It was also decided in this case, that it was unnecessary to go into the question, whether the award was or was not valid by reason of the fact that some of the defendants did not join in the reference. *Chairman of the Purnea Municipality v. Siva Sankar Ram*, 88 C. 890.

MACLEAN, C.J. and MOOKERJEE, J.

References.—29 C. 167=29 I. A. 51 (P.C.), F. 2 C.L.J. 153 and 2 C.L.J. 142, *Appr.* 9 C.W. N. 878, *Diss.*

See, also, I, 275 and 276.

(261) Ss. 522, 523, 525—*Punjab Courts Act (XVIII of 1884), S. 70—Arbitration—Award—Application to file—Objections to filing of award—Appeal—Revision*.

An application was made under Ss. 523 and 525 of the Code, before the arbitrator had made his award. At the hearing, objections were raised, *inter alia*, that the award dealt with matters not referred to arbitration and that there had been a previous award. The Court, without deciding the objections, passed a decree in accordance with the award.

On appeal, the application was dismissed on the ground that the reference to arbitration did not cover the matters dealt with by the award.

On further appeal, it was contended (1) that the appeal against the decree of the Original Court was not competent, (2) that the appeal was barred by time and (3) that the award was valid.

Held, (1) that the proceedings being under Ss. 523 and 525 of the Code, an appeal lay as to the fact of reference and the award being covered by the reference (a);

(2) that the appellant was entitled to deduct the time spent in making the review of judgment and, allowing the time so spent, the appeal was within limitation;

(3) that it was not necessary that the award should have been given before application was made under Ss. 523 and 525, Civ. Pro. Code,

Code (Act XIV of 1908).

(Continued).

that it was not shown that there had been any previous final award and that the agreement to award included all the matters in dispute.

The lower appellate Court held that the objections filed by the defendant to the award were filed within time and should have been disposed of by the Original Court.

It is held that this finding was correct but this question could not be dealt with on appeal. On revision, the Chief Court directed the original Court to receive the objections and dispose of them according to law. *Bhagwan Singh v. Ram Kaur*, 88 P.L.R. 1906.

CLARK, C.J.

References.—(a) 84 P.R. 1901=112 P.L.R. 1901, F., 25 P.R. 1902 (P.C.)=1 Digest 1902, D.

(262) *Ss. 522, 523, 526—Arbitration award, private—Decree—Appeal.*

When a Court has ordered a private arbitration award to be filed under S. 526, C. P. C., and has drawn up a decree in accordance with the award, no appeal lies against such decree except in so far as the decree may be in excess of, not in accordance with the award.

Quere.—Whether this rule is not limited to cases of misconduct and has any application when the cause shown against the filing of the award has denied the submission to arbitration or the genuineness of the award (a).

S. 526 should be read with S. 523, the provisions of which are, by implication, made applicable to cases under the former section; the Court must proceed to give the judgment according to the award and upon the judgment so given, a decree shall follow, from which decree, no appeal lies, except in so far as the decree is in excess of, or not in accordance with, the award.

The decision of the Full Bench in 25 C. 757, in so far as it affirmed the decision in 25 C. 141, has been overruled by the Privy Council in the case of 39 I. A. 51.

Sanble.—An order of refusal by a Court of first instance to file an award under S. 526, C.P.C., is a decree, against which an appeal lies (b).

The bar as to appeal provided by S. 522, C.P.C., is applicable only when a decree has been made in accordance with the award by

Civ. Procedure Code (Act XIV of 1908).

(Continued).

the Court of first instance and not when a similar decree has been made by a Court of appeal in reversal of the order of the first Court setting aside the award. *Chintamani Aulaya v. Haladhar Maki*, 2 C.L. J. 153—10 C. W. N. 501.

STEPHEN and MOOKERJI, JJ.

References.—(a) 18 M. 428, *Refd. to*, (b) 25 M. 256; 2 C.L. J. 80, F., 26 A. 205, *Distd.*

(263) *Ss. 522 and 525—Award, order refusing to file, appeal from—Application to file an award—Appeal.*

An order dismissing an application under S. 525 of the Code, to have an award filed in Court is not a decree and is not appealable. In S. 522, the words "upon the judgment so given a decree should follow" refer to a judgment according to the award and not to a judgment or decision that the award is invalid and not binding on the parties. *Ram Sewak Das v. Dharm Das*, 9 O.C. 205 (B).

SCOTT and WELLS, J.CS.

References.—27 M. 255, 18 C. 414 (P.C.); 29 C. 167, 26 A. 205, 28 A. 21 and 25 C. 757, B.

(264) *Ss. 522, 526 and 622—Award, private—Application to file—Objection under S. 520—Matters left undetermined—Disallowance of objection—Decree directing award to be filed—Appeal—S. 522, when applies—Practice—Mofussil Courts—Original side—Revision, power of, of High Court—Exercise suo motu.*

Per curiam (RAMPINI and PRATT, JJ., *contra*)—An appeal lies from an order passed under S. 526, Civ. Pro. Code, merely directing the filing of an award made on a submission to arbitration without the intervention of a Court of Justice.

Upon an application under S. 526, Civ. Pro. Code, to have a private award filed, the opposite party objected that the arbitrator had left undetermined certain matters referred to him for decision. The objection was overruled and the award was ordered to be filed and a formal decree was drawn up containing the following direction: "It is ordered that the arbitration award in this case be filed in Court." This decree was set aside on appeal, the lower appellate Court holding the objection to be a valid one:

Civil Procedure Code (Act XIV of 1892).
—(Continued.)

Held, per curiam (MACLEAN, C.J. and SALE, J., *contra*)—That no appeal lay from the decree of the first Court and the lower appellate Court had no authority to interfere with it.

Per MACLEAN, C.J. and GHOSE, J.—When an award has been ordered to be filed under S. 526, the party, in whose favour it is, must proceed to obtain a judgment and consequent decree under S. 522, and if that decree is according to the award, then there is no appeal from it.

Per GHOSE, RAMPINI and PRATT, JJ.—The decree in this case was substantially a decree in accordance with an award as contemplated by S. 526 read with S. 522.

Per SALE, J.—No decree expressly incorporating the terms of the award is required to be drawn up in pursuance of the order to file the award made under S. 526, nor is the clause restricting the right of appeal in the case of a decree made under S. 522, applicable to an order to file an award made under S. 526.

Per RAMPINI and PRATT, JJ.—No appeal lies from an order directing an award to be filed under S. 526, except when the decree is in excess of, or not in accordance with, the award, although an order refusing to file the award, is appealable.

Per MACLEAN, C. J.—An order directing as well as one refusing the filing of an award stand on the same footing as regards appealability (a).

Per curiam—The High Court can interfere under S. 622, of its own motion and in the absence of an application under that section. **Janokey Nath Guha Roy v. Brojo Lal Guha Roy**, 10 C. W. N. 609 (F.B.)=3 C. L. J. 450=33 C. 756.

MACLEAN, C. J. and GHOSE, RAMPINI, SALE and PRATT, JJ.

References.—(a) 6 C. W. N. 226=29 C. 167=L. R. 29 I. A. 51 (1901), *considered*.

(265) S. 523—See No. 261, *supra*.
S. 523—I, 276.

(266) Ss. 523, 526—Reference to private arbitration by parties pending a suit—Arbitration—Application to file the award—Such application is foreign to the suit—Practice.

The parties to a suit, during the pendency thereof, referred the matters in dispute to a

Civil Procedure Code (Act XIV of 1892).
—(Continued.)

private arbitration. The arbitrator having given his award, the plaintiff applied to have the award filed and for a decree in terms of the award. The defendant objected to the award on several grounds. The Subordinate Judge asked the plaintiff to pursue the remedy given him by law to enforce the award and dismissed the suit:—

Held, that, as there was no order of reference, the reference was governed by Ss. 523-526 of the Code; and under those sections it was necessary for an application to be made as provided by S. 525.

Held, further, that it was not open to the Court to treat the application as made in the suit: the application was completely foreign to the suit. The Court had, therefore, no power on that application to dismiss the suit.

Chapter XXXVII of the Code governs references to arbitration. It contemplates two classes of references: one by the parties to a suit who obtain an order from the Court for a reference to arbitration: the order, when persons agree in writing that the difference between them shall be referred to arbitration. Parties to a suit, as well as persons not engaged in litigation, may agree to refer matters in dispute between them to private arbitration (a). But the mere fact that litigants may agree to a private arbitration, does not make that arbitration an arbitration in the suit, unless there is an order of reference as contemplated by S. 506. **Shivling-rao Jagdeo Rao v. Rango Ramchandra**, 8 Bom. L. R. 777.

JENKINS, C. J., and BEAMAN, J.

References.—(a) 4 B. 1 and 27 A. 53, R. 28 B. 287 and 29 B. 621, R.

(267) S. 525—Award—Submission without the intervention of Court—Order refusing to file—No appeal.

No appeal lies from an order refusing to file, under S. 525 of the Code, an award passed upon a submission made without the intervention of the Court. **Basant Lal v. Kunji Lal**, 2 A. L. J. 450=A. W. N. (1905), 165=28 A. 21.

STANLEY, C. J. and BURKITT, J.

References.—6 A. 186; 26 A. 203=A. W. N. (1908), 284, F., 29 C. 167, *Expl.* 18 C. 414, *Refd. to*.

(268) S. 525—Reference to arbitration disputed—Jurisdiction of Court to determine

Civil Procedure Code (Act XIV of 1902).
—(Continued).

whether the parties had or had not referred the matter in question to arbitration.

Held, that upon an application made to it under S. 525 of the Code, the Court has jurisdiction to and is bound to, inquire into the question whether the parties had or had not referred the matter in question to arbitration. **Ganesh Singh v. Kashi Singh**, A.W.N. (1906), 186 = 28 A. 621.

AIKMAN, J.

References.—17 A. 21, 25 C. 757, 20 B. 621, R.

(260) S. 525.—See LIMITATION ACT, No. 70, 4 C.L.J. 162 and Nos. 261, 262, 263, *supra*.

(270) S. 525—Order for file of award under, *whether appeal lies from*.

Respondent applied under S. 525 of the Code and got an order for the filing of an award in Court. This was an appeal preferred on several grounds imputing misconduct *inter alia*, to the arbitrators within the meaning of S. 521 of the Code. On a preliminary objection taken as to the maintainability of the appeal, *held*, that in the circumstances, of the case, an appeal will not lie, since the grounds on which the order of the lower Court were impugned were all of them grounds falling under S. 521, which the lower Court had inquired into and decided. **M E Mya v. Na Pe**, U.B.R. (1905), Civil Procedure, 40.

SHAW, J.C.

References.—29 I.A. 51, F. U.B.R. (1897—1901), 14, partly overruled. 2 C.L.J. 158, R.

(271) S. 525—Arbitration—application to file award—Denial of reference to arbitration.

An application made to a Court, under S. 525, to file an award made in a matter referred to arbitration, without the intervention of the Court, if a person objects to the filing of the award, on the ground that there has been no reference to arbitration, the Court has jurisdiction to determine as to the genuineness and validity of the award. **Kikkara Appadu v. Datti Kamayya**, 16 M.L.J. 474.

MOORE and SANKARAN NAIR, JJ.

Reference.—20 M. 89, F.

Ss. 525 and 526—I, 277.

(272) Ss. 525, 520, 526—Application to file an award, order granting or refusing an, in a decree—Award on matters not referred, not to be ordered to be filed.

Civil Procedure Code (Act XIV of 1902).
—(Continued).

Where on an application made, under S. 525 of the Code, to a Court for filing an award therein the Court finds that the arbitrator has decided rights to certain properties regarding which no reference was made to him the Court is bound to refuse to allow the award to be filed and an order on such an application whether refusing or granting the prayer is a 'Decree' within its definition in the Code (a) and is appealable as such. **Tiruvengadathlangar v. Yaldinatha Ayyar**, 20 M. 803.

BENSON and MOORE, JJ.

Reference.—(a) 27 M. 255 (following 20 I. A. 61), F.

(273) Ss. 525, 622—Arbitration—Award—Refusal by the Subordinate Judge to file the award—Appeal—Revision—High Court.

The High Court followed the practice which permits applications under S. 622 of the Code, in cases where the Subordinate Judge refuses to file an award which has been presented to the Court for being filed under S. 525 of the Code. **Abdeali Gulamhusen v. Yusufali Alibhai**, 8 Bom. L.R. 570.

SIR LAWRENCE JENKINS, C.J. and BEAMAN, J.

(274) S. 526—Order directing an award on a private arbitration to be filed—order having the force of a decree—appeal against such order, Court fee payable on— See COURT FEES ACT, No. 2,38 C.11.

(275) S. 526—See Nos. 262, 261, 266, 272, *supra*.

(276) S. 539—Scope of suit—Jurisdiction of District Judge—Recovery of trust-property improperly alienated—Court-fees.

There is no good reason for holding that, under the section, the Court cannot determine of what the trust-properties consisted or find that particular alienation of them could not be maintained, provided all proper parties are represented before it.

Semble, if transferees or mortgagees, who have been impleaded in a suit instituted under S. 539, do not accept the findings of the Court in that suit, it may be necessary for the trustee appointed by the Court to manage the trust-property to institute a suit for recovery of possession.

Civil Procedure Code (Act XIV of 1882).

—(Continued).

Scndle (per STANLEY, C. J.)—A suit for the dismissal of a trustee and for recovery of trust-property from the hands of a third party, to whom the same had been improperly alienated fell within the scope of S. 589 (a).

A suit instituted under S. 589, is not a suit in which plaintiffs claim, or can claim for themselves, possession of the trust-property. They merely ask the Court to vest the trust-property in the trustees duly appointed to manage the trust and to take it out of the hands of trustees, who have been guilty of mismanagement. No change in the beneficial ownership is sought. The Court has undoubtedly power, under the section, to vest the trust-property in the new trustees, and it seems to be reasonably clear that the Court may direct a trustee, who is being removed, to make over the trust-property to the new trustees. The plaintiffs in such a suit carry on the suit for the benefit of all persons interested in the trust and continue to act as plaintiffs until the decree has been fully executed. As regards the Court-fees, in many cases, the costs of such a suit as this fall on the trust estate, and that, as the decree in such suit works no change in the beneficial ownership of the property, it would be a hardship to impose on the trust estate the payment of the ordinary Court-fee payable in respect of a hostile suit for recovery of land on title.

Per BURKITT, J.—By S. 589, the Legislature do not create a new class of civil rights nor constitute a Court empowered to hear suits relating to infringements of those rights. Were it not for S. 589, the class of suits, which the section makes triable by the District Judge only, would be cognizable by the ordinary Subordinate Courts empowered to hear original suits. A suit to recover possession of immovable property on title (even though it be alleged that the property in suit forms part of a *wagf* property and had been improperly alienated by the *mutwalli*) is not a suit of the nature specified in S. 589, and, therefore, it is not within the power of the District Judge, when hearing a suit under S. 589, to pass a decree for recovery of possession of such property. But the plaintiff in such a suit can obtain a direction from the District Judge to the *mutwalli* instructing the latter to get in the trust-property as ascertained by the Judge. *Ghasaffar Hussain Khan v. Yawar Hussain*, 2 A. L. J. 501 = A. W. N. (1906), 209 = 28 A. 112.

STANLEY, C. J. and BURKITT, J.

Civil Procedure Code (Act XIV of 1882).

—(Continued).

Reference.—(a) 34 C. 418, 429.

(277) S. 589—*Public trusts*—*Direction of the Advocate-General*—S. 589, if mandatory or permissive—*Its scope*—*Religious Endowments Act (XX of 1863)*, S. 14—*Demurrer*.

To bring a case within the purview of S. 589, the suit must be a representative one, brought for the benefit of the public and to enforce a public right in respect of an express or constructive public trust, upon a cause of action alleging a breach of such trust or necessity for directions as to its administration against a trustee of such express or constructive trust and whether such trustee be *ad hoc fure* or *de son tort* and for the particular relief mentioned.

Suits brought not to establish a public right but to remedy a particular infringement of an individual right are not within the section.

As against strangers, such as, aliens from the trustee and mere trespassers holding adversely to the trust, the section does not apply.

Meaning of the phrases "direction of the Court is necessary for the administration" and "such further or other relief" in S. 589 explained.

S. 589 is not mandatory but enabling and permissive; cumulative and not restrictive in its effect and does not affect any right of suit which may exist independently of it. If, therefore, a suit is one which would have been maintainable prior to the enactment of the corresponding section in the Code of 1877, it may now be instituted independently of the provisions of S. 589, even though it be upon such a cause of section and for such relief as is mentioned in it.

Scope and history of the section discussed and explained. *Rai Budroodas Mukim Bahadur v. Ghani Lal Johurry*, 10 C.W.N. 581 = 33 C. 789.

WOODBORNE, J.

(276) S. 589—*Advocate-General*—*Discovery upon oath*—*Practice*.

The Advocate-General cannot be called upon to make discovery upon oath, in a suit filed by him at the instance of relatives under the provisions of S. 589 of the Code. *The Advocate-General v. Adamji Mahomedali*, 8 Bom L.R. 565 = 30 B. 474.

BATCHELOR, J.

Civil Procedure Code, (Act XIV of 1908).
—(Continued).

(279) S. 532—*Spec. No. 39, supra.*

(280) S. 532—*Scheme for management.*

In settling a scheme for management under S. 530 of the Civ. Pro. Code, due consideration should be given to the established practice of the institution and to the position of the persons connected with it. *Baldavpuri Kailas-puri v. Bopaladas Tribhuvandas*, 8 Bom. L. R. 756.

* *JACKSON, C. J. and HEATON, J.*

Reference:—12 B. 247 (P. C.), F.

(281) S. 539—*Suit relating to charity—Suit instituted by one person with the consent of the Advocate-General—Amendment of plaint—Substitution of another plaintiff with the consent of the Advocate-General.*

A suit, under S. 530 of the Code, was, in the first instance, brought by one person with the consent of the Advocate-General. This was objected to, and it led to an amendment of the plaint by the addition of the second plaintiff, with the certificate of the Advocate-General which ran: "I give my consent to the amendment of the plaint of this suit as proposed.

Held, that the suit, as brought, is defective in a material particular; for S. 539 of the Code nowhere speaks of the consent of the Advocate-General to an amendment of the plaint, and it would be unduly forcing the words of the Code to hold that, by virtue of the second consent given by the Advocate-General, it can be said of this suit that it was instituted by two persons having an interest in the trust and having obtained the consent in writing of the Advocate-General. *Darves Haji Mahamed Sidik v. Jainudin Haji Badrudin*, 8 Bom. L.R. 751 = 30 B. 608.

JACKSON, C.J., and HEATON, J.

(282) S. 539—*Applicability of*.—*Suit brought by the whole body of persons authorized to administer the trust.*

Held, that S. 539 does not apply to a case where the suit is instituted by the whole body of persons, who are legally authorized to administer the trust to which it relates. *Ram Das v. Sadri Narain*, A.W.N. (1906), 280 = 8 A.L.J. 778.

* *KNOX and AIKMAN, JJ.*

Reference:—10 C.W.N. 581, F.

S. 539—I, 278-284.

Civil Procedure Code (Act XIV of 1908).

S. 544—I, 285 and 286.

(283) Ss. 544 and 561—*Appeal—Practices—Appeal by defendant against plaintiff and other defendants—Objections by plaintiff-respondent when entertainable as against co-respondents.*

Where it is necessary for the proper decision of an appeal before it, it is competent to an appellate Court to take into consideration objections filed under S. 561 of the Code of Civil Procedure by one of the respondents, not only as against the appellant, but, it may be, as against co-respondents, with the objector also, and to modify the decree as against them accordingly. *Abdul Ghani v. Muhammad Faah, A.W.N. (1905), 200—2 A.L.J. 687 = 28 A. 95.*

BAXTER and RICHARDS, JJ.

References.—20 C. 114, F.; 21 W.R. 838, *Refd. to.* and 28 A. 93, *Distd.*

Ss. 544, 561—I, 286, 288.

(284) S. 545—*Execution of decree—Stay of execution—Temporary stay—Surety—Discharge of surety.*

Where the appellant made an application, under S. 545 of the Code for stay of execution of the decree of the Court below and the appellate Court passed an order directing temporary stay on the appellant furnishing security under the said section and the lower Court stayed execution after the appellant and furnished security, the security bond executed in consideration of a temporary stay was, in itself, binding on the surety for the period during which it was allowed to operate for the benefit of the principal. It was not a mere "offer" by a surety, but the acceptance of an offer, having been executed by the surety in consideration of *ad interim* stay; it was binding pending the discharge of the rule, and its operation during that period could not be cancelled by the Court. The surety thereby made himself liable for such sum as on a consideration of all the equities the Court might adjudge to be fair compensation for losses sustained by the decree-holder owing to the temporary stay. *Pandu Laxman More v. Balu Mahadu Patil*, 8 Bom. L.R. 557.

RUSSELL and BATTY, JJ.

(284-a) S. 545—*See No. 135, supra.*

(285) Ss. 545, 546, 588—*Delivery of possession, stay of order for—Order staying proceedings,*

Civil Procedure Code (Act XIV of 1882).
—(Continued).

effect of, pending appeal—Appellate Court, power of, to stay order and proceedings—Rule nisi, order for, effect of—Execution, order for, when actually carried—Court, jurisdiction of—Express provisions of the Code—Procedure, matters of—Court, inherent power of—Security for restitution of property or for carrying out of decree.

S. 545 of the Code of Civil Procedure does not apply after execution has been carried out.

The essence of a Code, is to be exhaustive on the matters in respect of which it declares the law. On any point specifically dealt with by it, the law must be ascertained by interpretation of the language used by the legislature. In respect of such matters, the Court cannot disregard or go outside the letter of the enactment according to its true construction. The Code, therefore, binds Courts so far as it goes.

The Code of Civil Procedure (Act XIV of 1882) was not intended to be and is not exhaustive. It does not affect previously existing powers of the Court unless it takes them away (a).

The duty of a Judge is to apply dispositions of law not only to what appears to be regulated by their express provisions but to all the cases to which a just application of them may be made and which appear to be comprehended either within the express sense of the law or within the consequences that may be gathered from it (b).

The Code does not affect the power and duty of the Court, in cases where no specific rule exists to act according to equity, justice and good conscience, though in the exercise of such powers it must be careful to see that its decision is based on sound general principles and is not in conflict with them or the intentions of the legislature.

The Court will, where the circumstances require it, exercise an inherent power to act *ex-delicto justitiae* and to do that real and substantial justice for the administration of which alone it exists (c).

The appellate Court having seizin of the appeal, has an inherent power over the subject of litigation the nature of which is indicated and implied by S. 588 of the Code of Civil Procedure and can, in the exercise of that power, and, notwithstanding that the Decree has been

Civil Procedure Code (Act XIV of 1882).
—(Continued).

executed, call upon the respondent to furnish security for the due performance of any decree which may be made on such appeal (d).

An order for stay is made on the day that it is pronounced, and not on that on which it is drawn up or communicated (e).

When a superior Court has said that execution of a decree is not to take place, from that moment the Court to which application has been made for execution has no authority to execute it and delivery of possession under the authority of an order which was not then in force but had been suspended upon a stay granted by a superior Court is invalid (f).

Per WOODROFFE, J.—S. 546 of the Code of Civil Procedure has reference to the case where an order has been made for execution and the execution is pending or about to be given effect to. It does not apply where the order for execution has been actually carried out and where the property in suit has actually been delivered under the order made.

Per MOOKERJEE, J.—The words in S. 546 of the Code of Civil Procedure, namely, "the Appellate Court may for like cause, direct the Court which passed the decree to take such security," are not controlled by, or merely confined to, the case in which an order has been made for the execution of a decree and the execution-proceedings are still pending. The words in question are wide and the Court should not put too narrow a construction upon them and thus restrict the powers of the Appellate Court.

S. 546 of the Code authorises a Court of appeal to take security from a decree-holder even after execution of the decree under appeal has been completed. **Hukum Chand Bald v. Kamalanand Singh**, 8 C.L.J. 67 = 88 C. 227.

WOODROFFE and MOOKERJEE, JJ.

References.—(a) 17 A. 29 (81) and Civil Rule No. 8093 of 1905, *Refd. to.* (b) 9 W.R. 402 (406), *Refd. to.* (c) Civil Rule No. 8098 of 1905, *F.* (d) 7 B.H.C.A.C.J. 122, 8 W.R. 144, *Diss.* 12 W. R. 296, 17 W.R. 591, 10 M.L.A. 196, 19 M. 140 (142), 6 A. 269 = 11 I.A. 37, 10 C. 109 = 10 I. A. 171, 28 C. 794, 5 C.W.N. 781, 31 C. 722, L. R. 3 P.C. 465, 1 M. 10, 2 C.L.J. 537, 9 W. R. 402, 28 M. 306, *R.* and *F.* (e) 4 D.J. G.F. and J. 456 81 L.J. Ch. 429, *R.* (f) 1 C.W.N. 226, *Exp. and Diss.*

(286) S. 546—See No. 285, *supra*.

Civil Procedure Code (Act XIV of 1908).
—(Continued).

(287) *S. 546*—Surety for performance of appellate decree, whether, could be proceeded against by way of execution.

Execution for costs, awarded by a decree under appeal, was granted, on the respondent in this case standing surety, for restitution, in the event of the decree being reversed on appeal. The decree having been, subsequently, reversed, the judgment-debtor sought to recover from the surety, by way of execution, the amount paid. *Held*, the order was obviously under S. 546 of the Code and the Full Bench Ruling in *Raghubar Das v. Saligram* (a) applies equally to S. 545 and to S. 546,—the decision in that case approving 25 B. 409, a case with reference to S. 546 holding that recovery in such a case should be by execution-proceedings. **Deeki Nandan v. Gehna Mal**, 125 P. R. 1906.

REID, C. J.

References—(a) 109 P.R. 1906, 77 P.R. 1895 & 8 A. 639, R.

(287-a) *S. 549*—See No. 135, *supra*.

(288) *S. 551*—Judgment.

Held, that the dismissal of an appeal, under S. 551, by a Court, whose decision may be the subject of an appeal does not relieve the Court from the necessity of writing a judgment according to S. 574 of the Code. **Pandit Malku Lal v. Musammat Gulkandi**, 9 O.C. 32.

*RYVES, J.C.

Reference—25 C. 97, F.

(289) *S. 551*—Dismissal of appeal under, after issue of notice to respondent.

In this case notice of the appeal was issued to both the respondents, was served on one of them and was not served on the other as he was dead and the lower Court dismissed the appeal professing to act under S. 551 of the Code. *Held*, the lower appellate Court was wrong in having acted under the said S. 551 since that section empowers an appellate Court to dismiss an appeal without and before, but not after, sending notice of the appeal to the Court against whose decree the appeal has been made and without service of notice on the respondent and, as in the present case notice, had been issued to the respondent, the procedure of S. 551 was inapplicable. **Hamid Husain v. Bhola Nath**, A. W. N. (1906), 186.

BANERJI, J.

Civil Procedure Code (Act XIV of 1908).
—(Continued).

(290) *Ss. 551, 623*—Appeal, dismissal of—Review—Jurisdiction.

When an appeal is dismissed under S. 551 of the Code of Civil Procedure, the effect of the dismissal is to affirm the decree appealed against, which becomes merged in the decree of dismissal of the appellate Court. When, therefore, an appeal has been dismissed under S. 551, Civ. Pro. Code, the Court which made the decree appealed against has no jurisdiction to review its judgment or decree (a). **Peary Mohan Mukherjee v. Mohendra Nath Manna**, 4 C. L. J. 506.

RANPINI and MOOKERJEE, JJ.

References:—(a) 24 C. 759, applied, 21 B. 548, dissented from.

(290-a) *S. 552*—See No. 79, *supra*.

Ss. 556 and 558—I, Appeal (Civil), No. 57.

(290-b) *S. 550*—Power of appellate Court to add persons not respondents when appeal was presented as parties respondents to the appeal—See LIMITATION ACT, No. 35, 33 C. 320.

(291) *S. 561*—Appeal—Cross-objections by respondent—Appeal cannot be withdrawn after commencement of hearing of appeal.

On the date fixed for the hearing of an appeal and cross-objections filed by the respondent against a decree for redemption of mortgaged property, the Divisional Court ordered the respondent to file, by the next hearing, stamp sufficient to cover the amount claimed by him in his cross-objections and to put in an account of rent of the mortgaged property. On the subsequent hearing of the cases, the appellant sought to withdraw his appeal and urged that the cross-objections should not be heard. The Divisional Judge refused to grant the application on the ground that the hearing of the appeal had commenced.

Held, that the order of the Divisional Judge was right (a). **Gokal Chand v. Pala Mal**, 24 P.L.R. 1906.

JOHNSTONE and LAL CHAND, JJ.

References.—(a) 10 A. 587, 53 P.R. 1896, 3 M.H.C.R. 702, 23 W.R. 229, 9 B. 28, F.

(292) *S. 561*—See No. 283, *supra*.

S. 561—I, 288 and I, Act IV of 1898 (*Bombay City Improvement*), No. 2.

Civil Procedure Code (Act XIV of 1908).
—(Continued).

(292) S. 502—Effect of remand by appellate Court under, on limitation for execution of lower Court's decrees—See LIMITATION ACT, No. 182, 8 A.L.J. 8 and Nos. 4 and 79, *supra*.

S. 562—I, 289 to 292 and I, Act II of 1901 (N.W.P. Tenancy), No. 11.

(294) Ss. 562, 566—Power of appellate Court to remand a suit.

When a Court of first instance does not decide a case on a preliminary point but raises all the issues and goes fully into the matters in issue, it is not open to the appellate Court to remand the case under S. 562, C.P.C., but if it thinks that the determination of any particular question is necessary, it may make an order under S. 566 C.P.C. **Ambles Churn Das v. Kala Chandra Das**, 10 C.W.N. 422.

GHOSH and HOLMWOOD, JJ.

(295) Ss. 562, 568—Act (Local) No. II of 1901 (Agra Tenancy Act), S. 193—Remand—Appeal.

There is no appeal from an order of remand, passed under S. 562 in a suit or proceeding under the Agra Tenancy Act 1901. **Yilayat Husen v. Maharajah Mahendra Chandra Wandy**, A.W.N. (1905), 108 = 28 A. 88.

BANERJEE and RICHARDS, JJ.

Ss. 562, 578—I, 291.

Ss. 569, 588—I, 292.

(296) Ss. 562, 588, cl. (28) and 591—Remand, questioning the validity of the order of Appeal against the final decree, objection as to the remand order taken in.

Held, that, although no appeal has been preferred under S. 588 (28) of the Code against the order remanding a case under S. 562, yet the validity of the remand order can be questioned in second appeal preferred against the final decree passed in the case. It is not necessary that the appellant should appeal on other grounds as well: the appeal may be lodged against the final decree solely upon the ground that the remand order was illegal. **Sri Harakh v. Ram Dat**, 9 O.C. 80.

CHAMBER and WELLS, J. CS.

References.—12 A 510, 22 A. 366; 18 M. 491; 18 A. 10; 14 P. 32 and 28 C. 324, R.

(297) Ss. 562, 588, (28), 591—Remand—Limitation—Pre-emption—Foreclosure of mortgage by way of conditional sale.

Civil Procedure Code (Act XIV of 1908).
—(Continued).

Under S. 502, objection may be taken, on further appeal against the decree passed in the suit by the lower appellate Court, to an order of remand previously passed by it when no appeal was filed under S. 568 (28) of the Civil Procedure Code against the order. (a).

In the case of foreclosure of a mortgage by way of conditional sale, the limitation for a suit for pre-emption begins to run from the date of the expiration of the year of grace allowed to the mortgagor under Regulation XVII of 1806. **Rangu Ram v. Jewala Singh**, 32 P.L.R. 1906.

JOHNSTONE and LAL CHAND, JJ.

Reference.—(a) 14 B. 282, F.

(297-a) S. 564—See No. 79, *supra*.

S. 566—I, 293.

(298) S. 566—Appeal—Remand—Dismissal for default.

On an appeal the case was remanded to the original Court under S. 566 of the Code. Enquiry into the case was not completed by the original Court within the time allowed by the appellate Court which extended the time originally allowed and fixed a certain date for the hearing of the appeal but the date was not communicated to the parties. The case was not returned to the appellate Court by that date. The Court dismissed the appeal as none of the parties appeared on the date. An application to re-admit the appeal was rejected. On revision—

Held, that the action of the appellate Court was wholly irregular and *ultra vires*. **Muhammad Chiragh v. Musammam Jawal**, 90 P.L.R. 1906.

CHITTY, J.

(299) Ss. 566—Arbitration—Application by parties to Court of first instance after reference by appellate Court.

When a District Judge has remitted issues, under section 266 of the Code of Civil Procedure to the Court of an Assistant Collector, the latter, not being seized of the case, has no authority to entertain an application to refer to arbitration the matters in difference between the parties. **Raisul Singh v. Bhole Ram**, A.W.N. (1906), 221.

AIKMAN, J.

(300) S. 566—See No. 294, *supra*.

S. 568—I, 294 and Act I of 1896 (Bengal), No. 2.

Civil Procedure Code (Act XVI of 1908).
—(Continued).

(303), S. 574—*Judgment of appellate Court—Judgment not in accordance with law.*

In an appeal from a decree in a suit for money due on a mortgage by conditional sale, the following judgment was passed:—"The lower Court's judgment is in accordance with the evidence on the record. Appellant relies on a decree of the High Court which has never been executed. This appeal is dismissed with costs." *Held*, that this was not a sufficient compliance with the terms of S. 574 of the Code of Civil Procedure. *Babam Singh v. Jalmangal Singh*, A. W. N. (1906), 86.

STANLEY, C. J. and BURKITT, J.

S. 574—I, 294 and Judgment, No. 5.

(302) S. 578—

Where a plaint on behalf of Government was signed by the Collector and by a Pleader who was not the Government Pleader but who generally acted for Government, and the verification was signed by the Collector and the Government Pleader.

Held, per RAMPINI, J.—That the plaint was properly presented.

Per curiam—That the defects, if any, in the signing and verification of the plaint, were cured by S. 578. *Rakhal Chandra Tewary v. The Secretary of State for India in Council*, 10 C.W.N. 841.

RAMPINI and WOODROFFE, JJ.

(302-a) S. 578—Death of next friend pending appeal by minor—Omission to appoint new next friend mere irregularity within—See NEXT FRIEND, No. 1, 9 A.L.J. 81 and No. 104, *supra*.

See, also, I, *Misjoinder of Parties and Cause of action*, No. 1 and Civil Pro. Code, Nos. 68, 94, 122 and 232.

(303) S. 583—Power and duties of an appellate Court under the section same as are conferred and imposed on the Court of original jurisdiction—See Act VIII of 1900 (GUARDIAN and WARDS), No. 1, 3 C.L.J. 29 and Nos. 64 and 210, *supra*.

See, also, I, *Civ. Pro. Code*, Nos. 68, 226 and 230.

(304) S. 585—See Nos. 4, 126, 180, *supra*.

(305) S. 583—Redemption—Mere profits when in a redemption suit mortgagor of a portion of mortgaged property takes possession of the whole property on payment of

Civil Procedure Code (Act XVI of 1908).
—(Continued).

smaller sum than that subsequently found due by appellate Court—Res judicata.

The respondent filed a suit for the redemption of a mortgage of 1st July, 1878, so far as it affected a share in a village which he had purchased, or, in the alternative, for redemption of the whole mortgage. The appellants resisted the suit, and the first Court gave the respondent a decree for redemption of the whole village on payment of Rs. 8,652. On the 13th July, 1897, the respondent obtained possession of the village in execution of that decree. The appellate Court allowed redemption of only two-thirds of the village on payment of Rs. 8996-8-6. On the 28th January, 1902, the respondent deposited the balance payable by him for redemption according to the appellate Court's decree. On the 17th March, 1903, the appellants made an application under Ss. 583 and 203 of the Code claiming to be restored to possession of one-third of the village and payment of mere profits on account of the whole village from the date of their dispossession to the date on which the application might be disposed of.

Held, that the question whether the respondent, having obtained possession on a decree which allowed redemption on payment of a smaller sum than the appellate Court, found to be due, was liable for the mere profits for the period between the date of obtaining possession and the date on which he paid up the whole amount due was not a matter in appeal before this Court and therefore not *res judicata*.

Held, further, that under S. 583 of the Code, the appellants were entitled to mere profits by way of restitution for the whole of the village from the 13th July, 1897, when the respondent obtained possession under the decree of the first Court to the 28th January, 1902, when the full amount due under the decree of the appellate Court was paid and to mere profits on the one-third share from the latter date until the appellants recovered possession of it (a). *Gaya Din Singh v. Thakur Lal Bahadur Singh*, 9 O.C. 254.

SCOTT, J.O.

References.—(a) 26 B. 661 and 24 A. 361, R.

(306) S. 583—Execution of decree—Restitution of property sold in execution of a decree reversed in appeal—Procedure.

Civil Procedure Code (Act XIV of 1892).

—(Continued).

In a suit for a declaration that certain property belonged to the defendant judgment-debtor, the plaintiff decree-holder obtained a decree and proceeded on the strength thereof to sell the property. In appeal, however, this decree was reversed. The rightful owner of the property sold then applied to the Court for restitution of the property. *Held*, that whether the application could or could not be considered as one falling strictly within the terms of section 583 of the Code, the applicant was entitled to restitution. **Shiam Sundar Lal v. Kaisar Zamani Begam**, A.W.N. (1906), 315.

KNOX & RICHARDS, JJ.

Reference:—6 C.W.N. 710, R.

S. 583—*See, also, I, 295 and Jurisdiction (of Civil Court), No. 46 and Civ. Pro. Code, No. 149.*

(307) Ss. 583, 244—*Decree reserved on appeal—Transferee of appellate decree—right of, to claim restitution.*

The appellant contended that, though S. 583 provides that "when a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal, desires to obtain satisfaction, he shall apply to the Court which passed the decree against which the appeal was preferred," the term 'party' meant only the actual party to the suit and not his representative by way of assignment of decree. It was urged that the assignee of the decree was not entitled to proceed summarily in execution under S. 583 but could only get the benefit by bringing a suit and obtaining a decree in that suit. *Held*, that since, if there had been no assignment of decree, the holders of it, under the conjoint operation of Ss. 583 and 244, could have successfully made the application in question, the present applicant as their assignee and representative is also entitled to adopt the same procedure and ought not to be driven to an independent suit. **Jamini Nath Roy v. Dharma Das Sir**, 33 C. 857 = 4 C. L. J. 192.

MACLEAN, C. J. and GEIDT, J.

(308) S. 584—*See No. 64, supra.*

(309) S. 584—*Second appeal—Court acting on illegal evidence—question of custom.*

Where the lower appellate Court acts upon illegal evidence or upon evidence, which is legally insufficient to establish a custom of pre-

Civil Procedure Code (Act XIV of 1892).

—(Continued).

emption, or has disregarded any legal evidence, the High Court can treat the question of the existence or non-existence of a custom as one of law, but the High Court cannot, in second appeal, consider the weight of the evidence adduced by the parties. **Hasim Ali v. Abdul Rahmon**, 3 A.L.J. 467 = A.W.N. (1906), 187 = 28 A. 698.

RICHARDS, J.

References.—29 M. 24, 3 A.L.J. 398, R. "

(310) S. 584—*Appeal under the Agra Tenancy Act, not a second appeal under S. 584.*

Upon an appeal being preferred to a District Judge under S. 180, sub-section (2), cl. (a) of the Agra Tenancy Act, 1901, it is competent for the Judge to determine the questions of proprietary title raised and determined in the Subordinate Courts, such appeal not being second appeal of the description referred to in S. 584 of the Code. **Hamid Husain v. Bhola Nath**, A. W. N. (1906), 186.

BANERJI, J.

(311) S. 584—*Omission to decide a material issue, ground of second appeal—issue as to limitation, importance of.*

Where the first Court dismissed a suit on one of the issues, viz., that of title, observing that it was not necessary to decide the other issues, one of which was an issue as to limitation, and the second Court decreed the suit by reversing the finding of the first Court on the issue of title, but omitted to record a finding on the issue of limitation,

held, that the case must be remanded to the lower appellate Court for findings on the remaining issues. **Kailash Chandra Kundu v. Kunja Behari Goswami**, 4 C.L.J. 86.

RAMPINI and WOODROFFE, JJ.

(312) S. 584, cl. (a)—*Second appeal, competency of High Court in, to examine the evidence as to "usages having the force of law"—Right to trees on ryots' holdings under Zemindar.*

Though S. 584 of the Code disallows a second appeal with reference to findings of fact, yet the existence or non-existence of a usage having the force of law is unaffected by such disallowance. Consequently, it is the duty of the Court when it has to pronounce upon that question to examine the evidence bearing upon it, not only as to the sufficiency thereof to establish all

Civil Procedure Code (Act XIV of 1902).
—(Continued).

the elements (antiquity, uniformity, etc.) required to constitute a valid usage having the force of law, but also the credibility of the evidence relied on and the weight due to it (a), and in India it has been laid down ever since the days of MANU that, "custom is transcendent law."

A ryot holding lands in a zemindari on a permanent tenure would, as regards land on which money assessment is paid, be *prima facie* entitled to the trees therein exclusively. In regard to lands, as to which the sharing of crops between the zemindar and ryot prevails, the zemindar and the ryot would be jointly interested in the trees standing thereon, but presumptions to the above effect are liable to be rebutted by proof of usage or contract to the contrary (b). **Abbaya v. Papaya Rao Bahadur**, 29 M. 24 = 16 M. L. J. 8.

SUBRAHMANYA Aiyar, OFFG. C.J., and BODDAM, J.

References.—(a) 4 M. 272, 7 M. 3, 8 M. 464 *Refd.* to. 10 C. 138 and 22 B. 490, *not F.* (b) 26 M. 252, *F.*

See, also, I, 294-296 and Costs, No. 11.

(313) S. 586—*Suit for rent and for a declaration as to the propriety of patta tendered to the tenant—Small Cause Suit—Second appeal.*

Where, in a suit for rent under Rs 500, the landlord sued for a declaration as to the propriety of the *patta* tendered to the tenant and for the recovery of the rent, *held*, that, as the plaintiff could have obtained all the relief which he sought in his suit without asking for a declaration, the prayer for a declaration does not prevent the suit being of the nature cognizable in a Small Cause Court, within the meaning of S. 586 of the Code and that no second appeal lies in such a case. **Ramachendralayar v. Mir Muhammed Noorulla Sahib**, 1 M.L.J. 314 (F.B.) = 16 M.L.J. 477.

WHITE, C.J., and BENSON & WALLIS, JJ.

(314) S. 586—*Small cause suit.*

A suit for recovery of a rent of less than Rs. 500 and for a declaration that the lands, the rent of which is due, are *wunjah* lands, is a suit of small cause nature, and no second appeal lies. **Ramanatha Chettiar v. Kamytha Anthoni Udayan**, 16 M.L.J. 432.

BENSON and BHASHYAM IYANGAR, JJ.

Civil Procedure Code (Act XIV of 1902).
—(Continued).

See, also I, 297, Civil Pro. Code, No. 142 and Tort, No. 2.

S. 587—I. Civ. Pro. Code, Nos. 68 and 226.

(315) S. 588—Applicability of—to proceedings in rent suits under the North-West Provinces Tenancy Act—*See ACT II OF 1901 (N.W.P. TENANCY)*, No. 26, 3 A.L.J. 20 and Nos. 4, 79, 80, 251, 256, 285, and 295, *supra*.

See, also, I, Civ. Pro. Code, Nos. 99, 149, 251, 296 and 297.

(316) S. 588 (9)—*Order setting aside an ex parte decree, no appeal lies from.*

Where an application made, under S. 108 of the Code, to set aside an *ex parte* decree was accepted and order passed setting the decree aside, no appeal lies from such an order, S. 588 (9) of the Code allowing appeals only in the case of orders rejecting applications under S. 108 (d). **Bura Ram v. Mitha Ram**, 103 P.R. 1905 = 45 P.L.R. 1906.

RATTIGAN, J.

Reference.—(a) 16 C. 426, *R* and *F*.

(317) S. 588 (9)—*See Nos. 3 and 81, supra.*

(318) *Order specified in S. 588 (17) passed by Court inferior to District Court, appeal lies to District Court and not to High Court from—*

Where an order under S. 351, appealable under S. 588 (17), has been made by a Court subordinate to the District Court, *cl.*, (a) of the proviso to S. 519 of the Code lays it down that an appeal from such an order shall lie to the District Court. The appellate tribunal is fixed with reference to the grade of the original Court passing the order, from which the appeal has to be made, and, if such Court is one subordinate to the District Court, then irrespective of the jurisdiction-value of the suit, in which the order has been made, appeal from such order lies to the District Court and not to the High Court (a). The word "subordinate" in S. 589 must, in the absence of the express provision or clear inference from the context to the contrary, be taken to be used in the same sense as in the definition of "District Court" in S. 2 of the Code. **Hardayalmal v. K. C. Sarkar**, 2 N. L. R. 54.

STANFON, A. J. C.

References.—(a) 23 A. 56 and 27 B. 604, *Appr.* 17 M. 377, *Diss.*

Civil Procedure Code (Act XIV of 1902).

—(Continued).

(319) S. 598 (18)—See No. 314, *supra*.(320) S. 598 (26)—See No. 254, *supra*.(321) S. 598 (28)—See Nos. 296 and 297, *supra*.

(322) Ss. 598 (28), 599, inapplicability of, to appeals from judicial orders passed by a Collector or as a Revenue Court under the Punjab Tenancy Act—See ACT XVI OF 1887 (PUNJAB TENANCY), No. 14, 1 P.R. 1905 (Rev).

(322-a) S. 599—See No. 322, *supra*.(323) S. 591—See Nos. 296 and 297, *supra*, and I, *Appeal (Civil)*, No. 1.Ss. 595 and 596—1, *Letters Patent (Calcutta)*, No. 3.

(324) S. 596—Refusal by High Court of leave to appeal to Privy Council—Value of subject-matter in dispute—See PRACTICE (OF PRIVY COUNCIL), No. 3, 88 C. 893.

(325) S. 596—Amount or value of the subject-matter of the suit, meaning of—Amount or value of the matter in dispute on appeal—Decree involving directly or indirectly some claim or question to or respecting property—Appeal to His Majesty in Council—Privy Council appeal.

In a suit for partition, the value of the subject-matter of the suit, for the purposes of valuation under S. 596 of the Code of Civil Procedure for appealing to His Majesty in Council, is the value of the whole of the estate which it is sought to partition and not merely that of the particular share, which one of the parties may claim (a).

When, therefore, in a suit for partition, the value of the entire estate is ten thousand rupees or upwards, although that of the appellant's share may be valued less, the decree for partition does involve, directly, or indirectly, some claim or question to or respecting property of the amount or value of ten thousand rupees or upwards within the meaning of the third paragraph of S. 596 of the Code of Civil Procedure.

Under such circumstances, where the decree appealed from is in reversal of the decree of the Court below, the case is a fit one for appeal to His Majesty in Council and a certificate should be granted accordingly. *Bhagwant Sahai v. Pashupathi Nath Bose*, 3 C. L. J. 257=10 C. W. N. 564.

MACLEAN, C. J. and MOOKERJEE, J.

Civil Procedure Code (Act XIV of 1902).

—(Continued).

References.—(a) 2 C. L. J. 197; 7 M. L. A. 261, 6 W. R. M. S. 4 and 17 C. 680; *Appl. c*

(325-a) S. 596—Inclusion of means profits in calculating value of appeal to Privy Council—See *APPEAL (TO PRIVY COUNCIL)*, No. 7, 88 C. 1286.

S. 596—See, also, I, 298, 299.

(326) S. 601—Privy Council, appeal to—Leave to appeal, application for—Certificate, refusal of—grounds to be stated.

The High Court in refusing a certificate for leave to appeal to His Majesty in Council should state the grounds for refusing it. *Wanganath Swareopathil Valla Nambidi Avergal v. Cherakunnath Nambiyathan Nambudiri*, 10 C. W. N. 545 (F.C.)=8 Bom. L.R. 374=16 M. L. J. 160=29 M. 94=4 C. L. J. 805.

LORD DAVEY, SIR ANDREW SCOBLE, and SIR ARTHUR WILSON.

(327) S. 610—Execution of decrees—Privy Council—Restoration of property alienated pending appeal to the Privy Council—Procedure.

Pending an appeal to His Majesty in Council, certain property, forming part of the subject-matter of the suit, in which such appeal had been preferred, was sold by auction in execution of a money-decree against the plaintiff, who held the decree of the High Court under appeal. The defendant's appeal to the Privy Council was decreed. *Held*, that the successful appellant was entitled to recover the property sold as above mentioned by means of an application under S. 244 read with S. 610 of the Code of Civil Procedure, and this right was not affected by the fact that the auction purchasers were not parties to the decree of the Privy Council. *Garurduh Prasad Singh v. Balju Mal*, A.W. N. (1906), 48=3 A.L.J. 110=28 A. 387.

BANKERJ and RICHARDS, JJ.

References.—26 A. 417, F., 19 A. 186 and 20 A. 180, D.

(328) S. 617—*References*—High Court—Practice.

A reference, under Ch. 46 of the Code, can only be made when the Judge of the lower Court entertains a reasonable doubt, and he cannot, ordinarily, entertain a reasonable doubt on a point clearly decided by the rulings of the High Court of his Presidency unless the authority of the decision can be questioned by virtue

Civil Procedure Code (Act XIV of 1908).
—(Continued).

of anything said or decided in Privy Council. *Bharnaji Bhatkale v. Joseph & Co. Bhatkale*, 7 Bom. L.R. 225 = 80 B. 225.

JENKINS, C.F. and ARON, J.

Reference.—21 B. 198, *Refd.* to.

(329) S. 617—*Court Fees Act (I of 1870)*, S. 18 (2)—*Reference*—*Court-fee payable on memorandum of appeal*.

Held, that section 617 of the Code of Civil Procedure does not contemplate a reference as to the proper Court-fee payable on a memorandum of appeal. *Pir Baksh v. Fais Mahomed*, A.W.N. (1906), 180.

BARNETT and ALKMAN, JJ.

(330) S. 622—*Revision*—*Error of law not connected with the jurisdiction of the Court*.

In a suit based on a document, which bore a one anna stamp with two parallel lines drawn across it, the Court *held* that it was a promissory note payable otherwise than on demand and that it was, therefore, not duly stamped and was not admissible in evidence. In revision under S. 622 of the Code, it was contended that the Court had acted in the exercise of its jurisdiction with material irregularity, because the decision as to the admissibility of the document was wrong and by reason of that erroneous decision, it had failed to deal with the claim of the plaintiff, in so far as it was based on the document, which was *held* to be a promissory note.

Held, that S. 622 of the Code, does not apply to a case like this when the Court has erred, if at all, in deciding a question of law which is not connected with the jurisdiction of the Court. *Gur Prasad v. Satgur Prasad*, 9 O.C. 107.

CHAMBER, J.C.

(331) S. 622—*See Act XV of 1892 (PRAJEDENY S. C. COURTS)*, No. 2, 8 Bom. L.R. 678 and Nos. 82, 127, 177, 227, 228, 264 and 278, *supra*.

(332) S. 622—*High Court's power to revise proceedings in the Bombay Court of Small Causes—Presidency Small Cause Courts Act, S. 2—Charter Act*.

The High Court, in the exercise of superintending powers under its extra-ordinary jurisdiction, will not ordinarily interfere, except in cases of grave and otherwise irreparable

Civil Procedure Code (Act XIV of 1908)
—(Continued).

injustice. *Isma'li Ibrahimji Nagree v. M. G. Macleod*, 8 Bom. L.R. 909.

RUSSELL, C.J., and BRAMAN, J.

(333) S. 622—*Revision, whether High Court will interfere in, when remedy by appeal is open—Order under S. 244, binding effect of*.

The order of a Court deciding a question arising between the parties, under S. 244 of the Code, in relation to execution of a decree, is itself a decree within the definition in the Code and is, accordingly, appealable. Consequently, the High Court is not to interfere by way of revision, in such a case, so long as the remedy by way of appeal was open.

Held, also, a decision given in an execution case is as binding between the parties and those claiming under them as if it were the final judgment in the suit itself (a). *Hla Gyaw v. Sit Yon*, 8 L.B.R. 181.

LEWIS, J.

Reference:—(a) 6 A. 269 (P.C.), F.

(334) S. 622—*Charter Act, S. 15—Analogous appeals in superior and inferior Courts—Duty of inferior Court to await decision of superior Court*.

The High Court has powers either under S. 622, Civ. P.C. or if not, under S. 15 of the Charter Act, to interfere in cases where the lower Courts have not acted correctly in accordance with law.

Where a plaintiff failed to secure the production of an important document from the records of another Court though he took all reasonable steps for that purpose and the suit was disposed of by both the Court of first instance and the Appellate Court without reference to that document, the High Court in revision set aside the judgments of both the Courts.

When appeals preferred in analogous cases are pending, some in an inferior and others in a superior Appellate Court, the inferior Court of Appeal would exercise a wise discretion to await the decision of the superior Appellate Court. *Mohant Gobind Ramanuja Das v. Lakshmi Parida*, 11 C.W.N. 112.

BARNETT & GUPTA, JJ.

(335) S. 622—No appeal from an order under—passed by a single Judge of a High Court disposing of an application for revision—*See*

Civil Procedure Code (Act XIV of 1892).
—(Continued).

LETTERS PATENT (N.W.P.), No. 4, A. W. N. (1905), 218.

See, also, I, 299 300, 303, and I, Civil Pro. Code, Nos. 38, 39, 99, 111, 145, 150, 201 and 261; *Small Cause Courts Provincial, Act (IX of 1887), No. 4.*

Ss. 622 and 225—I, 301.

(336) Ss. 622, 623—*Review of judgment pending an appeal—Appeal dismissed under S. 551 of the Code—Procedure—Practice.*

Where there has been an appeal there still may be a review of the judgment of the Court, against whose decree the appeal was preferred, provided the appeal to the higher Court is withdrawn. Where, however, an appeal is preferred, but the same is rejected under S. 541 of the Code, the Court of first instance cannot entertain an application for review of its own judgment. **Ramappa Dareppa v. Sharma Rama**, 8 Bom. L.R. 842=80 B. 625.

JENKINS, C. J. & BRAMAN, J.

References:—7 B. 287 & 9 Bom. H.C.(A.C.J.) 89, R.

(337) Ss. 622, 623, 626—*Review of judgment—Order dismissing the rule granted—Appeal—Limitation.*

An application for review commences ordinarily with an *ex parte* application, under S. 623 of the Code. The Court, then, may either reject the application at once, or may grant a rule calling on the other side to show cause why the review should not be granted. In the second stage, the rule may either be admitted or rejected: and it is obvious that the hearing of this rule may involve, to some extent, an investigation into the merits. If the rule is discharged, then the case ends. If, on the other hand, the rule is made absolute, then the third stage is reached; the case is re-heard on the merits and may result in a repetition of the former decree or in some variation of it. Though, in one aspect, the result is the same whether the rule be discharged or, on the re-hearing, the original decree be repeated, in law there is material difference, for, in the latter case, the whole matter having been re-opened, there is a fresh decree. In the former case, the parties are relegated to, and still rest on, the old decree.

On the 20th November, 1902 an order in revision was passed: and, in supplement of

Civil Procedure Code (Act XIV of 1892).
—(Continued).

it, a further order as to cost was made on the 20th December, 1902. On the 8th August, 1903, the present respondent applied, under S. 623 of the Code, for a review of the judgment. Notice was issued to the opposite party and the application for review was heard with the result that the Court rejected the application for review on the 14th September, 1903. The respondent appealed against this order dated the 14th September, 1903, and the lower appellate Court held that there was sufficient cause for granting the review and, as a result, proposed a new order in substitution of the one passed on the 20th December, 1902. The appellant appealed to the High Court contending that no appeal lay from the order dated the 14th September, 1903.

Held, that no appeal lay from the order of the 14th September, 1903, and that the proper procedure would be an appeal from the order of 20th December, 1902. **Yadial Hakamchand v. Fulchand Umedram**, 7 Bom. L.R. 664=80 B. 56.

JENKINS, C.J. and ASTON, J.

(338) S. 623—See Nos. 80, 88, 245, 290, 386 and 387, *supra*.

(339) S. 623—*Ground of review—Fraud—Mistake.*

The ground that fraud was practised upon a party in connection with a petition of compromise, upon which a decree was made, is a good ground of review under S. 623, C.P.C.

A mistake in the matter of copying out the petition of compromise may not, by itself, fall within the scope of S. 623, but, taking it with the other ground stated above, it might be a good ground of review. **Rasik Chandra Chowdhury v. Rajani Ranjan Chowdhury**, 10 C.W.N. 286.

GHOSE and PRATT, JJ.

(340) S. 623—*Review of judgment—Effect of order on review—Appeal from original decree.*

Where an application for review of judgment is granted, the result is a new decree superseding the original decree, and not merely some amendment thereof. An appeal was filed pending an application for review of judgment in the Court below; the review was granted, and an order passed, which purported merely to amend the decree then under appeal. *Held*,

Civil Procedure Code (Act XIV of 1908).*--(Continued).*

that the order for review superseded the original decree; the decree under appeal had ceased to exist and the appeal could not be heard, **Kanhaiya Lal v. Baldeo Prasad**, A. W. N. (1905), 285=28 A. 240.

STANLEY, C. J. and BURKITT, J.

Reference.—A.W.N. (1890), 144, F.

(341) S. 628, inapplicability of, proceedings under the (Guardian and Wards), Act, 1890—See ACT VIII OF 1890 GUARDIANS AND WARDS No. 5, 148 P.R. 1906.

(342) S. 629—*Discovery of favorable decision of superior Court, whether good ground for grant of review.*

The respondents obtained a decree for pre-emption of part of the property sold in the case. The judgment was erroneously passed, in accordance with a case subsequently found to have been overruled by a full Bench decision passed prior to the wrong judgment but not brought in time to the Court's notice. Under the ruling of the Full Bench, appellants should have obtained decree for the whole of the property in question; so, they applied for a review on that ground. *Held*, the fact that the appellants were deprived by the original decree of what they were entitled to, according to the then existing judicial decisions, constituted a miscarriage of justice, affording ground for a review. **Sujan Singh v. Fateh Muhammad**, 124 P.R. 1906.

REID, C.J.

References :—6 A. 292, F; 14 C. 627, D.

S. 629—*See, also, I, Civ Pro. Code, No. 330.*

(343) Ss. 628, 624 and 626—See LIMITATION ACT, No. 6, 3 C.L.J. 545.

(344) S. 624—See Nos. 245 and 343, *supra* and LIMITATION ACT, No. 6, 3 C.L.J. 545.

(345) S. 624—*review—power of a succeeding Judge to review order of his predecessor.*

A divisional Judge dismissed an appeal for default. His successor in office allowed a review of the order dismissing the appeal on the ground that it was passed in the absence of the appellant and without giving him notice of the hearing of the appeal. The question for decision was whether the successor had power to review his predecessor's order on the ground above mentioned. *Held*, that the order admitting the

Civil Procedure Code (Act XIV of 1908).*--(Continued).*

review was illegal. **Bahadur v. Fattah Khan**, 82 P.R. 1906.

REID, C.J.

Reference.—28 C, 115, Diss.

Ss. 624 and 629—I, 304.

(346) S. 626—See Nos. 337 and 343, *supra* and LIMITATION ACT, No. 6, 3 C.L.J. 545.

See, also, I, Civil Pro. Code, No. 330.

(347) S. 629—See No. 88, *supra*.

See, also, I, Civil Pro. Code, No. 333.

(347-a) S. 640—See No. 79, *supra*.

(348) S. 646 B—reference made to High Court under—Duty of referring Court to submit records with a statement of its reasons for its reference—See SMALL CAUSE COURTS ACT (PROVINCIAL (ACT IX OF 1887), No. 6, 3 A.L.J. 23.

(348-a) S. 646 B—Scope of—Jurisdiction of appellate tribunal—See SMALL CAUSE COURTS PROVINCIAL ACT, (IX OF 1887.) No. 6, 1 M.L.T. 414.

(349) S. 647—Act No. VIII of 1890, (Guardian and Wards Act), Chapter II—Guardian and minor—Application for appointment of guardian—Procedure.

Where the mother of an unmarried female minor applied for a certificate of guardianship under Act No. VIII of 1890, it was held that it was no valid objection, the parties being Muhammadans, that the mother had married again. *Held*, also, that in hearing an application for certificate of guardianship, the Court ought to record the statements of the witnesses in the manner provided for by the Code of Civil Procedure. It is not sufficient merely to make on the back of the application notes of the statements of persons examined. **Ghafuran v. Chhanga**, A. W. N. (1906), 64=3 A. L. J. 841.

BANERJI, J.

(350) S. 647—Second appeal—Suit cognizable by Court of Small Causes—Decree—Execution.

No second appeal lies from an order passed in execution of a decree in a suit of the nature cognizable in the Court of Small Causes. **Narayan Permanand v. Nagindas Bhaldas**, 7 Bom. L.R. 641=30 B. 113.

JENKINS, C.J. and ASTON, J.

Reference.—27 A, 484, *Refd. to.*

Civil Procedure Code (Act XIV of 1902).
—(Concluded).

(351) S. 647—See Nos. 81, 84, and 180, *supra*.
See, also, I, *Guardians and Wards Act*, No. 3;
Civ. Pro. Code, Nos. 39 and 58.

(352) S. 649—See No. 226, *supra*.

(353) S. 649—transfer of local jurisdiction
—application for execution, to which Court to
be made—See **EXECUTION OF DECREES**, No. 16,
9 O.C. 281.

S. 649—See, also, I, *Act I of 1894 (Land Ac-*
quisition), No. 11.

(354) S. 652—See, No. 45, *supra*.

See, also, I, *Costs*, No. 7.

Sch. IV, Form. 130—See, I, 304.

Civil Procedure Code (Travancore).

(1) S. 39—Prior suit for declaration and
possession decreed for declaration only,
whether bars subsequent suit for recovery of
possession.

The plaintiffs had sought, in a former suit,
for declaration of their rights to, and recovery
of possession of, the properties, in the present
suit, among others, but got, in result, only a
declaration with, virtually, an implied permis-
sion to bring a fresh suit for the recovery of the
properties. It was contended that the previous
suit barred the present as *res judicata*. *Held*,
the correct test in cases of this kind is
"whether the claim in the new suit is in fact
founded on a cause of action distinct from that
which was the foundation of the former
suit" (a) and, it not being established that the
present suit was based on a cause of action
distinct and separate from the one in the prior
suit, the present suit was barred. **Raman**
Gorindan v. Raman Raman, 21 T.L.R. 159.

GOVINDA PILLAI, HUNT & PUDMANABHA
AIYAR, JJ.

References:—(a) 11 M.I.A. 605, F., 21 M.
158, D.

(2) S. 103, 423—Application to set aside
ex-parte decrees against minor whether should
be made only by guardian on the record,
where not formally appointed by Court.

The view, that an application, under S. 103
of the Code, to set aside a decree against a
minor, must be made only by the minor himself
or by his guardian on the record of the suit,
would be right, only, if the guardian already on
the record was one appointed by the Court, un-
der S. 423 of the Code, on plaintiff's application
for the purpose. Where no such formal appoint-

Civil Procedure Code (Travancore).—(Con-
tinued).

ment of guardian has been made by the Court,
the minor must be taken to have been unrepres-
ented in the *ex-parte* inquiry and the applica-
tion to set aside the decree passed there in
against him, need not necessarily be made by
the guardian on the record, who was not
properly appointed. **Chithambara Kuttallem**
Perumal v. Manikavasagam Chandana Nuthu,
21. T.L.R. 70.

GOVINDA PILLAI OFFG. C.J., & PADMANABHA
AIYAR, J.

References:—24 A.888 (886), R. 80.C. 1081, D.

(3) Ss. 228 (e), 955—Payment under decrees
admitted by decree-holder, whether should

of property in execution, whether could valid-
ly sell before confirmation.

Where a decree-holder, made mention of
the payment of a portion, of the decree amount
and prayed for execution of the rest of the de-
cree only, the lower Court was of opinion that,
as no record of such part satisfaction, was
made by the Court, the same could not be
taken any notice of. *Held*, no such recording
by Court is necessary either under S. 255 or
under S. 228. Under the former section, it is
the decree-holder that has to certify payment
and, under clause (e) of the latter section, it is
his duty to specify, in his execution petition,
any adjustments subsequent to the decree and
it is only when the decree-holder fails so to
certify, that the judgment-debtor has a right to
inform the Court and get satisfaction recorded.

Held, further, that, in the interval between
an auction-sale and the confirmation thereof,
there is not merely a contract for sale but an
inchoate transfer of title, which only requires
confirmation to perfect it (a) and consequently,
even before the confirmation, the purchaser
gets such a title to the property as could validly
be conveyed by him to others. **Muthanthu**
Pootathan v. Ponnann Padmanabhan, 21 T.L.
R. 152.

HUNT & PADMANABHA AIYAR, JJ.

References.—(a) 12 C. 597 and 17 B. 375, F.

(4) S. 228—Sale in execution, suit to set
aside a, on the ground of fraud—whether
compensation awardable to plaintiff in the
alternative—

This was a suit to set aside an auction sale of
certain property or, in the alternative, to award

Civil Procedure Code (Travancore).—(Contd.)

to the plaintiff the value of the property as damages. The lower Court held that there was no proof of any fraud, in the publication or conduct of the sale, but, instead of dismissing the suit as it ought to have done, proceeded to allow compensation to plaintiff, on the ground that the price realised was so disproportionate to the market-value of the property that the inadequacy of the price was itself evidence of fraud. *Held*, that the mere inadequacy of the price realised at an auction-sale could afford no ground for refusing to confirm the sale and that there was nothing in the present case to hold that the plaintiff was entitled to any compensation. **Kesavan Govindan v. Renga Aiyar Venkatchalam Aiyar**, 21 T.L.R. 206.

SADASIWA AIYAR, C. J., & GOVINDA PILLAI and RAMACHANDRA ROW, JJ.

References:—L.R. 3 I.A. 280, 10 I.A. 25 & 8 B. 424, *Appr.* 21 M. 856, 409; 31 C. 885, 480; 26 C. 324 & 11 T.L.R. 27, R.

(5) *Ss. 286, 308—Affixure of proclamation of sale under S. 286, absence of, whether vitiates the sale.*

This was an application by a decree-debtor, under S. 308 of the Code, to set aside a sale under the decree, on the ground of irregularity in publishing the sale, the proclamation having been omitted to be affixed near the property. The decree-holder contended that the affixing of the proclamation was not absolutely necessary, under S. 286 of the Code, since, by omitting in that section the express provision to that effect contained in S. 271, the legislature meant to dispense with the necessity of such procedure. *Held*, the words, "The proclamation shall be made in the manner prescribed by S. 271," occurring in S. 286, were meant to include the affixing of the proclamation as well as the publication by beat of tom-tom; and, consequently, the omission to affix the proclamation on the spot was a material irregularity vitiating the sale. **Nilan Subramanian alias Sivanjanam v. Chitambarathann Mathevan**, 21 T. L. R. 157.

GOVINDA PILLAI & PADMANABHA AIYAR, JJ.

References:—13 T. L. R. 9 (*Appr.*) & 11 C. 74, F.

(6) S. 307 A, application to set aside a sale, period of limitation for—See **LIMITATION (TRAVANCORE)** No. 19, 21 T.L.R. 196.

Civil Procedure Code (Travancore).—(Concl'd).

(7) *S. 350, order of abatement under, whether could be appealed from.*

The question was whether an appeal lay against an order of abatement passed under S. 350 of the Code. *Held*, an order of abatement puts the suit completely out of Court and is as final as formal adjudication on the merits, until set aside. Such an order is virtually a decree as it disposes of the plaintiff's claim as completely (a) as if the suit had been dismissed and the current of the decisions is strongly in support of the view that an appeal does lie from an order of abatement passed under the first part of S. 350 of the Code. **Krishnan Krishnan v. Aiyappan Kechu Nannan**, 21 T. L. R. 191.

HUNT & PADMANABHA AIYAR, JJ.

References:—(a) 10 B. 223, F. 17 A. 17, 20 A. 126, D. 18 T. L. R. 119, 18 M. 496, R.

Clog.

(1) on the equity of redemption—See **MORTGAGE (REDEMPTION)**, No. 14, A. W. N. (1906), 202.

(2) On redemption, covenant to renew mortgage perpetually is a,—See **MORTGAGE (REDEMPTION)**, No. 17, 16 M. L. J. 462.

See, also, I, Trans. of Pro. Act, No. 25, Mortgage (Redemption), Nos. 21 & 28.

Collector.

(1) Authority from Board of Revenue to— to raise loan on mortgage—Delegation of authority by Collector—See **ACT VIII OF 1890 (BENGAL COURT OF WARDS)**, No. 1, 3 C.L.J. 165.

(2) Award of, under S. 151 of the Land Revenue Act—whether subsequent reference could be made to the Civil Court—See **LAND REVENUE ACT (CENTRAL PROVINCES)**, No. 2, 2 N.L.R. 172.

(3) Adjudication by, as to the amount of duty chargeable on an instrument, whether Courts can question—See **STAMP ACT (II OF 1899)**, No. 7, 181 P.L.R. 1906.

See, also, I, Act I of 1894 (Land Acquisition), No. 2.

Collectorate.—I, Revenue sale, No. 1.

Commission.

Order for depositing additional costs of, whether enforceable when not entered in the decree—See **CIV. PRO. CODE**, No. 226, 10 C.W.N. 234.

See, also, I, Civil Pro. Code, No. 235 and 236 and Boundaries, No. 1.

Commissioner.

(1) Report of—Uncontested in Court below—Power of appellate Court to go behind the report—See ACT VII of 1895 (BENGAL TENANTY), No. 20, 4 C.L.J. 37.

(2) Suit for partition—Report of—Court not competent to modify Commissioner's report—See Civil Procedure Code, No. 238, A.W.N. (1905), 188.

See, also, I, 306.

Committee.—I, Act XX of 1863 (Religious Endowments), No. 1.

Common Carriers.—I, 307.

Companies Act (VI of 1882).

—See ACT VI of 1882 (COMPANIES).

Company.

(1) Directors—Board of Directors—Quorum of three members—Only one member remaining on Board—Powers of the member.

A resolution of the Directors of a Company provided that three members should form a quorum at the meeting of the Directors. Of the three Directors, two resigned, leaving only one in charge of the affairs of the Company. The accounts of the Company having been prepared, the question arose as to how and who should pass the accounts. On the Director applying to the Court for directions, *held*, that three courses were open to the Director. —

(1) The Director can get five members of the Company to summon a meeting under S. 78 of the Indian Companies Act, 1882.

(2) The Director himself can call an Extraordinary General Meeting and his act in doing so would be valid under Art. 71.

(3) The Director can move the Court to call a general meeting. *Sorabji Gursatji v. The Hind and Punjab Cotton Press Co., Ltd.*, 8 Bom. L.R. 478.

RUSSELL, J.

See I, 307-311.

I, Act I of 1874 (Bombay), No. 1.

„ Act IV of 1883 (Companies), No. 2.

„ Civ. Pro. Code, No. 948.

„ Contract Act, No. 42.

Compensation.

(1)—Whether awardable to plaintiff in the alternative, on suit to set aside a sale for fraud—See Civ. Pro. Code (Travancore), No. 4, 21 L.R. 506.

Compensation.—(Continued).

(2)—For non-delivery of goods, suit against a carrier for, governed by Art. 81 of the Limitation Act—See Limitation Act (XV of 1877), No. 47, 108 P.R. 1906.

(3)—for buildings erected on Government land, granted to a private individual, when such land is resumed—See *Restoration*, No. 1, 7 Bom. L.R. 785.

See, also, I, 311 and 312 and Act I of 1894 (Land Acquisition) Nos. 6 and 9.

Compensation for breach of Contract.—I, 310.

Compromise.

(1) Compromise presented to Court but no decree passed thereon—Court's proceeding with suit subsequently, effect of on the compromise—Sanction for compromise on behalf of minor, procedure in granting.

Application for leave to enter into a compromise on behalf of the minor, the second plaintiff in the suit, was made and granted but no decree in accordance with the compromise presented was then passed. Subsequently, at the instance of one of the parties to the suit, the Court set aside the order declaring him *ex parte*, and directed the suit to be posted for trial on the merits, with reference to the issues raised before the presentation of the compromise as well as certain additional issues with reference to the written statement of the above party. *Held*, the Court ought not to have subsequently as it did directed a decree to be drawn up in accordance with the compromise, as it was not open to it, at that stage, to treat the compromise as one subsisting between the parties. The effect of the Court's proceedings subsequent to the compromise amounted to a rejection of the same as the basis of a decree and it must, therefore, be deemed to have been put an end to.

In sanctioning a compromise on behalf of a minor, the order granting the sanction should, in terms, state the question whether the compromise was for the benefit of the minor was considered. The Court should, also, ascertain and record that in the opinion of the pleaders, if any, representing the minor, the compromise was one entered into in the interests of the minor and fit and proper to be sanctioned. *Govindaswami Naidu v. Alagiswami Naidu*, 29 M. 104.

SUBRAHMANYA AYYAR, Offg. J.S. and S.A.
KARAN NAIR, J.

Compromise.—(Concluded),

References.—17 A. 231, 26 B. 1
and 16 Ch. D. 41, B.

(2)—by a guardian *ad litem* on behalf of minor defendant, sufficiency of grounds for suit by the minor to set aside. —See Civ. Pro. Code, No. 240, 28 M. 28—16 M.L.J. 14.

(3) Relief claimed under the—different from that in the plaint.—See Civ. Pro. Code, No. 220, 16 M.L.J. 554.

(4) Suit against minor.—Leave of Court.—See Civ. Pro. Code, No. 242, 4 C.L.J. 8.

(5)—under S. 375 Civ. Pro. Code, no appeal lies from decrees passed on.—See Civ. Pro. Code, No. 219, 5 O.C. 365.

See, also, I. Mahomedan Law (Adoption), No. 1; Estoppel, No. 11; Minor and Guardian, No. 3.

Comptroller-General.—*I. Limitation Act, No. 24.*

Conflict of Laws.

(1) *Laws in a foreign state—Burden of proof lies on him who alleges they are different from British laws—Presumption in absence of proof—Trustee and cestui que trust—Confidential relationship.*

It lies on him who asserts it to prove that the law of the foreign state differs from ours, and in the absence of such proof it must be held that no difference exists except possibly so far as the law here relies on the specific Acts of the Legislature.

Persons standing in a confidential relation towards others cannot entitle themselves to hold benefits which those others may have conferred upon them unless they can show to the satisfaction of the Court that the person by whom the benefits have been conferred had competent and independent advice in conferring them. This applies to the case of trustee and *cestui que trust*. *Raghubathji Mulchand v. Yarlj-wandas Madanjee*, 8 Bom. L. R. 525—30 B. 578.

JENKINS, C.J. and BARRY, J.

Consideration.

(1) *Conveyance, registered and delivered, v operative—not paid, effect of—*

If A executes a conveyance in favour of B, and the document is registered and delivered, it is not necessarily operative; if it is proved that the consideration agreed upon has not been paid, and the deed shows that the inten-

Consideration.—(Concluded).

tion of the parties was that there should be immediate payment of the consideration-money, title does not vest till the condition is fulfilled. *Sarat Chandra Naskar v. Hari Pada Mistri*, 4 C.L.J. 388.

RAMPINI and MOOKERJEE, JJ.

(2) Where a substantial part of it—has been paid, a transaction cannot be described as colourable.—See TRANSFER OF PROPERTY ACT, No. 38, 8 Bom. L. R. 110.

(3) Payment of money as—for adoption, by adoptive father, to the natural father, legality and propriety of.—See HINDU LAW (ADOPTION), No. 1, 16 M. L. J. 22.

(4) The 'want or failure of consideration' mentioned in S. 92, Prov. 1 of the Evidence Act is a complete want of failure of.—See EVIDENCE ACT, No. 17, 8 Bom. L. R. 307.

(5)—for a deed, who can question.—See SALE TRANSACTION, No. 1, 16 M. L. J. 146.

(6) Suit on mortgage decreed in respect of part of consideration—failure of rest of consideration.—See LIMITATION ACT, No. 61, 8 A. L. J. 248.

(7) Non-payment of, effect of, on conveyance registered and delivered to purchaser.—See SPECIFIC PERFORMANCE, No. 3, 4 C.L.J. 332.

(8) Absence of, for the making of a promissory note.—Rights of a *bona fide* holder in due course for consideration and without notice of want of consideration.—See PROMISSORY NOTE, No. 2, 1 M. L. T. 303.

(9) Doctrine of, explained and discussed.—See CONTRACT ACT, No. 2, 16 M. L. J. 422.

(10) Fraudulent transfer of moveable property.—Portion of the debts discharged by part of the consideration for the deed of assignment.—Validity of the transaction in part.—See TRANSFER OF PROPERTY ACT, No. 29, 16 M. L. J. 427.

(11)—partly fictitious, alienation by childless proprietor on, suit by minor son to set aside, whether maintainable.—See CUSTOMS (PROVINCIAL TO PUNJAB), No. 59, 127 P. L. R. 1906.

(12) Suit for refund of purchase-money maintainable on a total failure of.—See CIV. PRO. CODE, No. 185, 3 A. L. J. 619.

See, also, I. Contract Act, Nos. 8 and 12; Evidence Act, No. 10; Specific performance, No. 1; Right of suit, No. 23; Limitation Act, No. 84.

Construction.

- 1.—(OF ACTS).
- 2.—(OF ARTICLES OF ASSOCIATION).
- 3.—(OF DECREES).
- 4.—(OF DEEDS).
- 5.—(OF GRANTS).
- 6.—(OF KABULIYAT).
- 7.—(OF LEASE).
- 8.—(OF WAJIB-UL-URZ).
- 9.—(OF WILLS).
- 10.—(OF WORDS).

-1.—(of Acts).

(1) Meaning of the expression 'same matter' in S. 28, C.P.C.—See CIV. PRO. CODE, No. 87, 16 M.L.J. 39=39 M. 50.

(2) Meaning of the words 'Fails to present' in S. 113 of the C.P.C.—See CIV. PRO. CODE, No. 87, 16 M.L.J. 30.

(3) Meaning of the word 'representative' in S. 244, Civ. Pro. Code—See CIV. PRO. CODE, No. 327, 3 A.L.J. 110.

(4) Meaning of the words 'Person interested' in S. 18 (1) of the Land Acquisition Act—See ACT I OF 1894 (LAND ACQUISITION), No. 15, 10 C.W.N. 195.

(5) Meaning of the word 'dwell' in Art. 12 of the Letters Patent—See WILL, No. 5, 1 M. L.T. 71.

(6)—of 'date of issuing notice' in Art. 179 (5), —See LIMITATION ACT, No. 146, 10 C.W.N. 308.

(7) Statutes of Limitation ought to receive such a construction as the language in its plain meaning imports—See Limitation Act (XIV OF 1859), No. 1, 3 A.L.J. 113.

(8) On points specifically dealt with by enactments, Courts cannot disregard or go outside the letter of enactments—See CIV. PRO. CODE, No. 285, 3 C.L.J. 67.

(9) Meaning of the words "Conclusive proof" in S. 11 of the Oaths Act—See ACT X OF 1873 (OATHS), No. 3, 8 Bom. L.R. 19.

(10)—of the words "wrongfully in possession" in Art. 109 of the Limitation Act—See LIMITATION ACT, No. 67, 3 C.L.J. 182.

(11) Meaning of the words 'the right which the plaintiff claims to the property in dispute' in S. 283, Civ. Pro. Code—See CIV. PRO. CODE, No. 155, 3 C.L.J. 381.

(12) S. 5, Limitation Act—Meaning of the words 'sufficient cause'—See LIMITATION ACT, No. 5, 3 C.L.J. 545.

(13) Meaning of 'direction' of the Court is necessary for the administration' and 'such

Construction.—(Continued).**—1.—(of Acts.)—(Continued).**

further on other relief' in S. 589, Civ. Pro. Code.—See CIV. PRO. CODE, No. 277, 10 C. W. N. 581.

(14)—of S. 95 of the Transfer of Property Act—See TRANSFER OF PROPERTY ACT, No. 98, 10 C.W.N. 626.

(15)—of the word 'object' in S. 23 of the Contract Act—See CONTRACT ACT (IX OF 1872), No. 7, 10 C.W.N. 755.

(16) Meaning of the word 'days' in S. 55 of the Madras District Municipalities Act—See ACT IV OF 1884 (MADRAS DISTRICT MUNICIPALITIES), No. 3, 16 M.L.J. 101.

(17)—of the words 'undivided family' and 'dwelling house' in S. 4 of Act IV of 1893 Partition—See ACT IV OF 1893 (PARTITION), No. 1, 9 O.C. 156.

(18)—of the word 'village' in the Punjab Laws Act—See PRE-EMPTION, No. 16, 21 P.R. 1906.

(19)—of the word 'lands' in S. 10 of the Punjab Laws Act—See PRE-EMPTION, No. 17, 22 P.R. 1906.

(20)—of the word 'value' in S. 19 of Act XII of 1887 (Bengal, etc., Civil Courts)—See ACT VII OF 1887 (SUITS VALUATION), No. 3, 3 A.L.J. 266.

(21)—of the word 'sub-division' in the Oudh Laws Act—See XVIII OF 1876 (OUDH LAWS), No. 2, 9 O.C. 211.

(22)—of the word 'relative' in S. 3 of the Lunatics Act (XXXV OF 1858)—See ACT XXXV OF 1858 (LUNATICS), No. 2, 94 P.R. 1906.

(23)—of the words 'such debts and liabilities' in S. 3 of Act VI of 1876 (Bengal)—See ACT VI OF 1876 (BENGAL), No. 2, 4 C.L.J. 238.

(24)—Meaning of the words "purporting to be done in official capacity" in S. 424, Civ. Pro. Code—See CIV. PRO. CODE, No. 287, 9 O.C. 275.

(25)—The word 'house' in S. 40 of Act I of 1894, meaning of—See ACT I OF 1894 (LAND ACQUISITION), No. 2, 9 O.C. 311.

(26)—of Ss. 12 and 18 of Act I of 1894—See ACT I OF 1894 (LAND ACQUISITION), No. 10, 7 Bom. L.R. 697.

(27) The word 'suit' in Act XXIII of 1871 (Pensions) does not include execution-proceedings—See ACT XXIII OF 1871 (PENSIONS), No. 1, 7 Bom. L.R. 659.

Construction.—(Continued).**1.—(of Acts).—(Concluded).**

(28)—of the words 'not resident' in S. 37 of the Civ. Pro. Code—See CIVIL PROCEDURE CODE, No. 46, 2 A.L.J. 626.

See, further, I, Act XIII of 1855, No. 1; Act XIV of 1874, No. 1; Act I of 1869, Nos. 1 & 2, Act XVII of 1879 (*Dekhan Agriculturist's Relief*), No. 1; Act V of 1881 (*Probate and Administration*), No. 5; Act I of 1894 (*Land Acquisition*), No. 4; Act VIII of 1885 (*Bengal Tenancy*), No. 40; Act III of 1899 (*Calcutta Municipality*), No. 1; *Easements Act* (V of 1882), No. 5; Act I of 1886 (*Madras Abkari*), No. 1; *Insolvency Act* (11 & 12, Vic. Ch. 42), No. 2; *Civil Pro. Code*, Nos. 49, 54, 59, 132, 140, 171, 192, 314 & 315; *Interest*, No. 5; *Limitation Act*, No. 41; *Stamp Act*, No. 5; *Transfer of Pro. Act*, No. 8 and *Mortgage (Extinguishment of)*, No. 1.

2.—(of Articles of Association).

See, I, *Company*, No. 1; and I, 317.

3.—(of Decrees).**(1) Ambiguous decree—Rule of construction.**

It is an elementary principle of construction that, when an order of a Court, the terms of which are ambiguous, have to be interpreted, such construction must, if possible, be adopted as will make the order an order in accordance with law, and not an order such as the Court making it has no power to pass (a). *Brojo Lal Rai Chowdhury v. Tara Prasanna Bhattacharji*, 3 C.L.J. 188.

RAMPINI and MOOKERJEE, JJ.

Reference:—(a) 19 A. 174, F.

(2) Admissions in the pleadings or in the course of the trial should not be ignored in the —See TRANSFER OF PROPERTY ACT, No. 71, 29 M. 64=16 M. L. J. 50.

(3) Decree directing defendant to pay the future annual income of land, not prayed for by plaintiff is a merely declaratory and not an executable decree—See DECLARATORY DECREE, No. 2, 1. M. L. T. 69.

Construction.—(Continued).**3.—(of Decrees).—(Concluded).**

(4)—of appellate Court in a pre-emption confirming decree of original Court, but silent as to time for payment of purchase-money—See PRE-EMPTION, No. 27, 48 P. R. 1906.

See, also, I, *Decree*, No. 10.

4.—(of Deeds).**(1) Ambiguity of language.**

The Construction placed upon one document could not be used for the purpose of ascertaining the meaning of a later document executed by the same person, where the later document does not embody or refer to the earlier document; the two documents are not in any sense parts of one transaction and they are not even contemporaneous documents and the language of the two documents is entirely dissimilar.

The ambiguity of the language used on the one subject cannot control the clear and unambiguous words employed with regard to the later. *Nurjahan Begum v. Faghfur Mirza*, 7 Bom. L.R. 850 (P. C.)=8 A.L.J. 64=27A. 883=9 C.W.N. 817=15 M.L.J. 327=8 O. C. 270=2 C. L. J. 57.

LORD HERFORD, LORD ROBERTSON, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

(2) Sale-deed—Vendee described as guardian of a minor—Benamidar—Right of Benamidar to sue or appeal in his own name.

Where property, which had belonged to the members of one family and had been sold by them, was reconveyed by the purchasers to the representatives of the same family, it was held, that a description of one of the vendee's parties to the reconveyance, as "*Musammal Inayat Fatima*, guardian of her son, *Mahmud-ul-Hasan*," was to be construed as importing a conveyance, not to the guardian in her own right, but to her son.

A benamidar can sue or appeal in his own name on behalf of the beneficial owner (a). *Bacheha v. Gajadhar Lal*, A.W.N. (1906), 173 =2 A.L.J. 702=28 A. 44.

BANERJI, J.

References.—(a) 18 A. C. 9 and 21 A. 380, F.

(3) Gift—Gift to two or more persons—Joint tenancy.

Held, that a conveyance of land to two or more persons without words indicating an in-

Construction. — (Continued).**4. — (of Deed). — (Continued).**

tention that they are to take as tenants-in-common constitutes a joint tenancy. *Manakamma Kunwar v. Balkishan Das*, A. W. N. (1905), 170—28 A. 88.

STANLEY, C. J. and BURKITT, J.

(8) *The operative part of a deed, large and general words in, may be controlled by the recitals.*

It is an important canon of construction that the clear words of conveyance in a deed cannot be controlled by the words of recital in it. So, where a deed contains a clear description of a particular property, but a contradictory recital, on doubts arising whether the recital or the conveyance is wrong, it ought to be held that the operative part is to stand, notwithstanding the fact that the recital would lead to a contrary conclusion. The exception to the above rule, however, always obtains, *viz* :—large and general words are not within the description of “clear words of conveyance,” which, according to the rule, cannot be controlled by the recital portions. Thus where there are large and general words amply sufficient to cover everything, in releases for instance, the recitals would clearly bind down the effect of those general words. *Seth Narasinghadas Mohkum Chaud v. Seth Tara Chaud Mohkum Chaud*, 2 N. L. R. 57.

DRAKE BROCKMAN, A. J. C.

Reference.—25 L. J. Ch. 795, F.

(5) *Deed of gift in favour of mother, daughter referred to in, merely as heir, gets no interest as grantee.*

Where a person passed a deed in favour of the widow of his brother reciting that the property comprised therein should in future belong to the widow alone and neither himself nor his heirs should have any right to the same and that, after the life of the widow, the property should go to her daughter. *Held*, that the deed in question contained an absolute grant to the widow and evidenced no grant to the daughter who was referred to merely as heir in the ordinary course, and with the view to show that, on the death of the grantee, *viz*, the widow, the grantor and his branch of the family should lay no claim to the property. *Manasawmy Naloken v. Gangammal*, 20 M. 600.

BENSON and MOORE, JJ.

Construction. — (Continued).**4. — (of Deed). — (Continued).**

(6) — “on demand.” — *Limitation.*

In a mortgage document dated the 15th September, 1878, the mortgagors stated that they received a sum of Rs. 1,000 repayable on the 5th year with interest thereon at 14 per cent. per annum payable on the 15th September of each year and agreed that “if the said amount be not properly paid, irrespective of the above said time for payment, we shall, on demand, pay in cash the total amount the interest at 1 per cent. per annum.” The default in payment took place in 1879 and there was no demand until the expiry of five years from the date of the bond. The plaint was presented on 14th September, 1895. *Held*, that the words “on demand” were intended to import a condition of a precedent demand and that, therefore, the suit (having been brought within 12 years of demand) was not barred by the law of limitation. *Vythilinga Nadan v. Narayana Sami Ayyan*, 16 M. L. J. 364.

COLLINS, C. J., and SHEPARD, J.

(7) *Setting up a claim or defence based upon a wrong construction of document.*

Where a party relies on a document in support of his claim or defence, the mere fact that he, in support of that claim or defence, put a wrong construction on it, is no reasonable ground for depriving him of the right he has on a proper construction of the document. *Raghavji Vissal v. Narandas Parmanandas*, 8 Bom. L. R. 921.

CHANDAVARKAR, J.

Reference. — (1889) P. J. 187, F.

(8) Provision in a sale-deed for a contingency does not create a charge—See TRANSFER OF PROPERTY ACT, No. 109, 8 A. L. J. 920.

(9)—of a clause in a deed of partnership as a provision entitling the heirs of a deceased partner to come into the partnership without imposing any obligation on the estate or on the heirs—See CONTRACT ACT, No. 49, 8 Bom. L. R. 8.

(10) Intention of parties as determining the character of a document—Admissibility of evidence of intention—See EVIDENCE ACT, No. 17, 8 Bom. L. R. 287.

(11) of sale and counterparty by vendee for resale to vendor—See VENDOR AND PURCHASER, No. 2, 18 M. T. J. 104.

Construction.—(Continued).**—A.—(of Deeds).—(Continued).**

(13) — of a trust-deed—See ACT II OF 1882 (TRUSTS), No. 2, 3 A. L. J. 237.

(14) Agreement for quiet enjoyment—Vendos dispossessed—Rent for damages—See DAMAGES, No. 2, 3 A. L. J. 501.

(14) Mortgage—Sale—Real agreement between parties whether embodied in document or not—Admissibility of oral evidence—See EVIDENCE ACT, No. 20, 3 Bom L R 680.

(15) Evidence Act, S. 93—Written instrument whether sale-deed or mortgage—Representation that a sale-deed would not be enforced as a sale-deed, effect of—See MORTGAGE (GENERAL), No. 20, 3 Bom L R 761.

(16) —Transaction evidenced by the deed—Nature of the transaction which the parties contemplated—Evidence—See MORTGAGE (GENERAL), No. 18, 3 Bom L R. 764

(17) Clog on equity of redemption—Covenant in subsequent simple mortgage deed not to redeem prior usufructuary mortgage without paying the subsequent advance—See MORTGAGE (GENERAL), No. 19, 3 A L J 672

(18) Usufructuary mortgage with personal covenant for re-payment of mortgage-money—Such personal covenant not conferring a right of sale—See MORTGAGE (CONSTRUCTION) No. 2, A W N (1906), 226

(19) Use of construction placed on earlier document in interpreting later document—See TRUST, No. 1, 9 C W N 817 (P. C.)

(20) Deed of gift—Life estate with remainder over—See HINDU LAW (STRIDHAN), No. 4, 2 C. L. J. 286 (P. C.)

See, also, I, 218-290 and Lense, No. 7 Hindu Law (Gift), No. 6, Hindu Law (Legitimacy), No. 2, Hindu Law (Stridhan), No. 3, Mortgage (Accounts), No. 3, Mortgage (Construction), No. 3, Trust, No. 5, Stamp Act (II of 1892), No. 6 and Pre-emption, Nos. 16 and 19.

—B.—(Grants).

Grant of village upon payment of a quit-rent—Grant of land or land revenue—See ACT XXIII OF 1871 (PENSIONS), No. 2, A W. N (1906), 906.

See, also, I, Grants, No. 9; Act X XIII of 1871 (Pensions), No. 2; Muses No. 3

Construction.—(Continued).**—C.—(of Kabulyah).**

See I, Landlord and Tenant, Nos. 14 and 15 and Rent, No. 1.

—7.—(of Lease)

(1) Payment of Government revenue, by lessee under terms of lease, not 'rent' within its meaning in S 8 of Act VIII of 1885 (Bengal)—See REGULATION VIII OF 1819 (BENGAL), No. 4, 3 C. L. J. 7.

(2) Lease containing clause inconsistent with the Agra Tenancy Act—See ACT II OF 1901 (AGRA TENANCY), No. 10, A. W. N (1906), 110. See, also, I, Lease, No. 6 and Specific Performance, No. 5.

—B.—(of Wajih-ul-ah).

(1) See PRE-EMPTION, No. 25, A. W. N. (1906), 124.

(2) See PRE-EMPTION, No. 37, 24 A 283

(3) Transfer of Muafi and Khalsa—See PRE-EMPTION, No. 31, 3 A L J 515.

—3.—(of Wills).

(1) Intention of testator how ascertained—Scope of enquiry—Admission of extraneous evidence

In construing a will, the intention of the testator must be ascertained from the language used in the entire will. The true enquiry is not what a testator meant to express, but what the words used to express, extrinsic evidence cannot be received as evidence of a testator's intention, outside and independent of the written words employed by him (a) *Bisalbash Das v. Monmohini Das*, 3 C L J 224

RAMPINI and MOOKERJEE, JJ

Reference —(a) G M I A 526, P.

(2) Specific fund set apart, liable for purposes specified.

By her will one Mrs. B directed that her funeral expenses should be paid out of the legacy bequeathed by her to her daughter. At the time she made her will she had certain residuary estate of which, however, she was then not aware. Held, the said expenses ought to be paid out of the legacy alone, effect having to be given to the express directions in the will to that effect and what the testatrix would have done if she had, at the time of making the devise, been aware of the existence of the residuary estate is not a matter to be taken into consideration *Gamani v. The Administrator-General of Madras*, 29 M. 290.

WHITE, C. J. and SUBRAMANIAM AMYAR, J.

Construction.—(Continued).**8.—(of Wills).—(Concluded).**

Reference.—2 Ch. 775, F.

(8) How to determine whether a certain document is or is not a will—See TRANSFER OF PROPERTY ACT, No. 7, 9 O. C. 55.

(4) Condition against restraint—testator's power to prescribe mode of devolution—Life-estates and contingent estates—See MAHOMEDAN LAW (WILL), No. 1, 8 A. L. J. 181.

(5) Comparison implied by the use of the word 'Such' in a clause—See WILL, No. 1, 8 Bom. L. R. 122.

(6)—of a clause in a will providing for bequest in favour of a son of a legatee who might be adopted at any time after the legatee's death by a widow who might not have been living at the testator's decease, as void under S. 101 of the Indian Succession Act X of 1865—See HINDU LAW (MANAGER), No. 1, 8 Bom. L. R. 268.

(7)—executed by Hindus—See ACT X OF 1865 (SUCCESSION), No. 7, 9 O. C. 159.

(8) Estate vested in interest as well as in possession—See HINDU LAW (WILL), No. 6, 3 O. L. J. 515.

(9) Meaning of "to my daughters and their respective sons" in a will by a Hindu—See ACT X OF 1865 (SUCCESSION), No. 11, 3 O. L. J. 502.

(10) See under HINDU LAW (WILL), No. 5, 9 O. C. 119.

(11) Right of demonstrative legatee under a will to resort to general assets obtains only in the absence of directions to the contrary by the testator—See WILL, No. 4, 29 M. 155.

(12) Gift over—See WILL, No. 6, 8 Bom. L. R. 615.

(13)—'Kul malick,' meaning of the words, in Hindu Will—See HINDU LAW (WILL), No. 7, 8 Bom. L. R. 492.

(14) Clause in will containing direction as to accumulation—See HINDU LAW (WILL), No. 3, 11 C. W. N. 65.

See, also, I, Administration, No. 2; Hindu Law (Self Acquisition), No. 2; Hindu Law (Will), Nos. 2, 3, 5, 8 and 13; and Wills Nos. 2, 12 and 13.

10.—(of Words).

(1) 'Aulad,' meaning of the word, in places where females are largely recognized as heirs, the term 'aulad' must be understood as mean-

Construction.—(Continued).**10.—(of Words).—(Continued).**

ing male and female issue. *Chiragh Bibi v. Hassan*, 19 P. R. 1906—70 P. L. R. 1906.

ROBERTSON and RATTIGAN, JJ.

References.—99 P. R. 1892, 25 P. R. 1892, 174 P. R. 1890, *Rejd. to.*

(2)—of the words 'Date of issuing notice' in Art. 179, cl. (5)—See LIMITATION ACT, No. 146, 10 C. W. N. 808.

(8) Meaning of "Permanent settlement" in S. 37—See ACT XI OF 1859 (BENGAL), No. 3, 10 C. W. N. 508.

(4)—of the words 'person interested' in S. 18 (1) of the Land Acquisition Act—See ACT I OF 1894 (LAND ACQUISITION), No. 15, 10 C. W. N. 195.

(5) 'Dwell,' meaning of the term, as used in Art. 12 of the Letters Patent—See WILL, No. 5, 1 M. L. T. 71.

(6) "Rent" meaning of the word in S. 3 of Act VIII of 1885—See REGULATION VIII OF 1819 (BENGAL), No. 4, 3 O. L. J. 7.

(7)—of "representative" in S. 244, C. P. Code—See CIVIL PROC. CODE, No. 327, 3 A. L. J. 110.

(8)—of the word 'Such' in a Will as implying comparison—See WILL, No. 1, 8 Bom. L. R. 122.

(9)—of the words "Conclusive proof" in S. 11 of the Indian Oaths Act—See ACT X OF 1873 (OATHS), No. 3, 8 Bom. L. R. 19.

(10)—of the word 'lands' in S. 10 of the Punjab Laws Act—See PRE-EMPTION, No. 17, 22 P. R. 1906.

(11)—of the word 'value' in S. 19 of Act XII of 1887 (Bengal, etc.; Civil Courts)—See ACT VII OF 1887 (SUITS VALUATION), (No. 3, 3 A. L. J. 266.

(12)—'Village' in the Punjab Laws Act, See PRE-EMPTION, No. 16, 21 P. R. 1906.

(13)—'Undivided family' and 'Dwelling house' in S. 4 of Act IV of 1893—See ACT IV OF 1893 (PARTITION), No. 1, 8 O. C. 166.

(14)—Meaning of the vernacular term 'lab-ham' used in a will—See WILL, No. 4, 29 M. 155.

(15)—of the word 'days' in S. 55 of the Madras District Municipalities Act—See ACT IV OF 1884 (MADRAS DISTRICT MUNICIPALITIES), No. 3, 16 M. L. J. 101.

Construction.—(Continued).**10.—(of Words).—(Continued).**

(16)—of the word 'object' in S. 28 of the Contract Act—See CONTRACT ACT, No. 7, 10 C. W. N. 755.

(17) Meaning of the word 'taraf'—See ACCRETION, No. 1, 3 C. L. J. 560 (P. C.).

(18)—of the words 'sufficient cause' in S. 5 of the Limitation Act—See LIMITATION ACT, No. 6, 3 C. L. J. 545.

(19) Meaning of the words 'the right which the plaintiff claims to the property in dispute' in S. 283, Civ. Pro. Code—See CIV. PRO. CODE, No. 155, 3 C. L. J. 331.

(20)—of the word 'sub-division' in S. 8 of the Oudh Laws Act—See ACT XVIII OF 1876 (OUDH LAWS), No. 2, 9 O. C. 211.

(21)—of the word 'relative' in S. 3 of Act XXXV of 1859—See ACT XXXV OF 1859 (LUNATICS), No. 2, 94 P.B. 1906.

(22)—'such debts and liabilities' in S. 3 of Act VI of 1876 (Bengal)—See ACT VI OF 1876 (BENGAL), No. 2, 4 C. L. J. 238.

(23)—of the word 'Chat' in S. 30 of the Act of 1894 (Bengal Municipality)—See BURNING CHAT, No. 1, 10 C. W. N. 1044.

(24)—'kul malic' in a Hindu will—See HINDU LAW (WILL), No. 7, 8 Bom. L. R. 482.

(25)—meaning of the term (interested) in S. 63 of the Contract Act—See CONTRACT ACT (TRAVANCORE), No. 2, 21 T. L. R. 142.

(26) The term—'Karabati' includes relations resident in villages other than that of a deceased tenant—See CUSTOMS (PECULIAR TO PUNJAB), No. 63, 123 P. L. R. 1906.

(27)—of the word 'imprisonment' in S. 359 of the Code of Civil Procedure—See CIV. PRO. CODE, No. 209, 3 L. B. R. 172.

(28) "Suppression," Municipality reconstituted after—Rights and liabilities of, See ACT IV OF 1884 (DISTRICT MUNICIPALITIES), No. 1, 1 M. L. T. 333.

(29) Meaning of "on demand"—limitation—See CONSTRUCTION (OF DEEDS), No. 6, 16 M. L. J. 364.

(30)—"Anubhavam or Anubhogam"—See MORTGAGE (REDEMPTION), No. 18, 16 M. L. J. 358.

(31) "Alienation," "alienee," "alienor," meaning of—In Act I of 1876 (Madras)—See ACT I OF 1876 (MADRAS), No. 1, 16 M. L. J. 468.

Construction.—(Concluded).**10.—(of Words).—(Concluded).**

(32)—"Purporting to be done in official capacity" meaning of, in S. 424, Civ. Pro. Code—See CIV. PRO. CODE, No. 237, 9 O. C. 275.

(33) 'House', meaning of in S. 49 of Act I of 1894—See ACT I OF 1894 (LAND ACQUISITION), No. 2, 9 O. C. 211.

(34) Meaning of the word 'Rent' in the Bengal Tenancy Act—See ACT VIII OF 1885 (BENGAL TENANCY), No. 22, 11 C. W. N. 110.

(35) "Official signature"—meaning of, in Reg. XVII of 1806—See REGULATION XVII OF 1806 (BENGAL), No. 2, A. W. N. (1906), 303.

(36)—of the word 'immediately' in sub-s. 2 of S. 12 of the Land Acquisition Act—See ACT I OF 1894 (LAND ACQUISITION), No. 10, 7 Bom. L. R. 697.

(37)—'not resident' in S. 37, Civil Procedure Code—See CIVIL PROCEDURE CODE, No. 46, 2 A. L. J. 626 = A. W. N. (1905), 221.

(38)—of the word 'suit' in S. 4 of Act XXIII of 1871 (Pensions)—See ACT XXIII OF 1871 (PENSIONS), No. 1, 7 Bom. L. R. 659.

(39) 'Heirs,' meaning of the term—See TRUST, No. 1, 9 C. W. N. 817 (P. C.).

(40) "2 per cent"—Payment of interest of.—See INTEREST, No. 21, 28 A. 724 (P. C.).

See, also, I, Act XIII of 1855, No. 1; Act XXIII of 1871 (Pensions), No. 1; Act V of 1881 (Probate and Administration), No. 1; Act I of 1894 (Land Acquisition), No. 4; Act XI of 1859 (Bengal), No. 10; Act X of 1876 (Bombay), No. 1; Act XVII of 1879 (Dekhan Agriculturist's Relief), No. 1; Act I of 1869 (Oudh Estates), No. 2; Act XXII of 1886 (Oudh), No. 1; Act XIII of 1900 (Punjab Land Alienation), No. 2; Civil Pro. Code, No. 54, 60, 132, 140, 223, 227 and 259; Easements Act, No. 5; Hindu Law (Legitimacy), No. 2; Hindu Law (Wills), No. 13; Landlord and Tenant, No. 12; Limitation Act, No. 40; Mines, No. 3; Transfer of Pro. Act, Nos. 8, M 33 and 80; Wagering Contract, No. 2 and Tenancy Act (Central Provinces), No. 5.

Contract.

(1) Deposit for the due performance of a contract, relief against forfeiture of the, when to be granted.

One S entered into a contract with a Railway Company for the supply of fuel to the Company,

Contract—(Continued).

The written contract contained various stipulations as to the proper performance of the contract and provided that the contract should be liable to be considered at an end and the sum of Rs. 850 deposited with the Company for the due fulfilment of the contract should be liable to forfeiture on the contractor's failure to comply with the terms of the contract. The contractor having failed to supply duly, the Company cancelled the contract and forfeited the sum deposited with them. *Held*, the amount of the deposit forfeited was not unreasonable and the forfeiture must be treated as valid and cannot be relieved against. **Manian Pattar v. Madras Railway Company**, 16 M. L. J. 37 = 99 M. 118.

SUBRAHMANYA AYYAR, OFFG. C. J. and **SANKARAN NAIK**, J.

References.—4 Ex. D. 68, F. 16 M. 474, *doubted*.

- (2) *Indent form—Inconsistency between printed and written provisions—Custom of Trade in Bombay—Indenter—Foreign manufacturer—Liability to account.*

Where, in an indent form in which the usual conditions or contract are printed, there exists some inconsistency between the printed and the written provisions, the Court cannot discard the print, but must, as far as possible, discover the real contract of the parties from the printed as well as from the written words.

According to the custom of trade in Bombay, when a merchant requests or authorises a firm to order and to buy and send goods to him from Europe at a fixed price nett, free godown, including duty, or free Bombay Harbour, and no rate of remuneration is specifically mentioned the firm is not bound to account for the price at which the goods were sold to the firm by the manufacturer. And it does not make any difference that the firm receives commission or trade discount from the manufacturer either with or without the knowledge of the merchant. **Paul Beller v. Chotalal Javerdas**, 30 B. 1 = 6 Bom. L.R. 948.

MR LAWRENCE JENKINS, C.J. and **BATCHER**, J.

- (3) *Minor—Specific performance.*

If a contract is validly entered into on behalf of a minor and there is mutuality in such contract, it may be specifically enforced, but

Contract—(Continued).

each case must depend upon its own particular circumstances. **Mr. Bhatwajan v. Fakhraddin Mahomed Chaudhary**, 4 C.L.J. 481 = 11 C.W.N. 34 = 1 M.L.T. 360.

MACLEAN, C.J., **CHAPMAN**, **BALFOUR**, **CHIT** and **HOLMWOOD**, JJ.

Reference.—20 C. 508, *Appn.*

- (4) By certificated guardian on behalf of a minor—Subsequent sale to a third party—Specific performance, suit for—Want of sanction by District Judge, effect of—See **GUARDIAN AND WARD**, No. 1, 10 C.W.N. 768.

- (5) Executory—, assignability of—See **TRANSFER OF PROPERTY ACT**, No. 3, 10 C.W.N. 755.

- (6) Procuring a breach of—Knowledge of the contract—Action for damages—Tort—See **DAMAGES**, No. 1, 8 Bom. L.R. 610.

- (7)—not signed in accordance with S. 45, Act IV of 1894 (Madras District Municipalities) not enforceable—See **ACT IV OF 1894 (MADRAS DISTRICT MUNICIPALITIES)**, No. 2, 29 M. 360.

- (8)—By Guardian prejudicial to minor's interests, if minor can sue to set aside—See **MINOR**, No. 3, 2 N.J.R. 146.

- (9) Whether grant of *patta* under the Darkhast rules is matter of—cognizable by Courts. See **DARKHAST RULES**, No. 1, 1 M.L.T. 278.

- (10) Lunatic's guardian incompetent to enter into valid—damages for breach of—See **ACT XXXV OF 1858 (LUNATICS)**, No. 6, 3 A.L.J. 986.

See, also, I, 324 to 329; **Act VI of 1898 (Post Offices)**, No. 1; **Civ. Pro. Code**, No. 85; **Company**, No. 3; **Construction (of Articles of Association)**, No. 2; **Contract Act**, Nos. 18 and 30; **Minor**, No. 5; **Specific Performance**, No. 1 and **Specific Relief Act**, Nos. 10 and 13.

Contract Act (IX of 1872).

- (1) Rights and liabilities of undisclosed principals—See **ACT XXVI OF 1881 (NEGOTIABLE INSTRUMENTS)**, No. 4, 1-M. L. T. 377.

- (2) *Sec. 2 (d) & 25—Consideration—Execution of pro-note after majority in settlement of one executed during minority.*

A pro-note, executed by a person, after he had attained majority, in settlement of an earlier one, executed by him, during minority, in consideration of a sum received by him during such minority, is void for want of consideration.

Contract Act (IX of 1872).—(Continued).

The words "at the desire of the promisor" in S. 2 do not contemplate a promisor, who, at the time, possesses contractual capacity. Consideration and contractual capacity being co-ordinate constituents of a contract, the latter element should not be imported into the definition of the former.

The term "consideration" implies a promise with reference to which it is a consideration. This correlation involves, as a consequence, that what is a consideration operates as such but once. Were it otherwise, it would follow "once a consideration always a consideration" and the same thing, which was consideration for one promise, would operate as consideration for any number of promises made, time after time, without any necessary connection between each other. This is virtually the overthrow of the doctrine of consideration. S. 25 is exhaustive.

Acts done in fulfilment of an imperfect obligation i. e., one which is an exception to the rule that *ubi jus ibi remedium est*, are valid and may be the foundation of new rights and liabilities, by way of consideration for a new contract or otherwise. A debt barred by limitation falls under such a category. But infant's promise, under the Indian Law, does not give rise to an imperfect obligation, and it is, therefore consistent with principle to hold that a renewal of such a promise creates no right. This accounts for S. 25 excluding such a case, among others. **Ramaswami Pandia Thalavar v. Anthappa Chettiar**, 16 M.L.J. 422.

SUBRAHMANIA AYYAR and MOORE, JJ.

Ss. 8, 10 & 25—I, Civil Pro. Code, No. 35.

(2) Ss. 10, 11, 28, 247 & 248—Infant's contracts, if illegal—Bond securing debts contracted during minority as well as sum advanced when adult, liability for—Fresh consideration—Infant's Relief Act, 1874 (87 & 88, Vic. ch. 69), S. 2.

There is nothing unlawful in an infant's paying for the property he has received and promised to pay for—only if he does not perform his promise, he cannot be compelled by law to pay.

S, an infant had a business in piece-goods, in the course of which he had various dealings with K and became indebted to her for a sum of Rs. 7, 374-4 the price of goods supplied to his

Contract Act (IX of 1872).—(Continued.)

business. After attaining majority, S. executed a *tumsook* or bond by which he covenanted to pay back within one year, the above sum as well as a further sum of Rs. 75-12-0 advanced to him at the time of execution of the *tumsook*.

Held—That S was liable for the whole amount secured by the bond. **Musammam Kundan Bibi v. Sree Narayan**, 11 C. W. N. 185.

HARINGTON, J.

(3-a) S. 11—See No. 8, supra.

S. 11—I, Minor, No. 6.

(4) S. 16—Undue influence—Loan to disqualified proprietor—Hard bargain—Compound interest, stipulation to pay, unconscionable.

The defendant, a disqualified proprietor under the provisions of the Oudh Land Revenue Act, was through his improvidence, largely involved in debt and in urgent need of more money, and was in a helpless position by reason of his estate being under the control of the Court of Wards and it appeared the person who gave him the loan in question was aware of this. His allowance from the Court of Wards was not sufficient to enable him to pay the compound interest stipulated for.

Held, that there was no fraud in the matter and no pressure was put upon the borrower, the position of the parties was such that the latter was such that the lender was "in a position to dominate the will" of the borrower within the meaning of S. 16 of the Act; and it having been concurrently found by the lower Courts that the stipulation to pay compound interest at the rate of 18 p.c. *per annum* was, in the circumstances, unconscionable; the Judicial Committee agreeing with them **held** that the lender used his position to demand more onerous terms than were reasonable.

Held, further, that the Subordinate Judge was wrong in deciding the case in accordance with what he supposed to be the English equitable doctrine. He ought to have considered only the terms of S. 16 of the Indian Contract Act.

Apart from the recent Statute, an English Court of Equity could not give relief from a transaction or contract merely on the ground that it was a hard bargain, except perhaps where the extortion is so great as to be of itself evidence of fraud. **Dhanipal Das v. Raja Manohar Baksh Singh**, 4 C.L.J. 1 (P.C.)=

Contract Act (IX of 1872).—(Continued).

1 M.L.T. 205 = 8 A.L.J. 496 = 9 O.C. 188 = 8 Bom. L. R. 491 = 10 C.W.N. 849 = 16 M.L.J. 292.

LORD DAVEY, LORD ROBERTSON, LORD ATKINSON, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

References.—(a) 11 M.I.A. 468 and 9. I.A. 182, R. and Exp.

See, also, I, 330.

(5) Ss. 20, 143 and 144—*administration bond, liability of sureties—Mutual mistake—Contract of guarantee, when void—Indian Succession Act (X of 1865), Ss. 256, 257, whether Registrar can assign a bond in favour of the Administrator-General—Act X of 1865, Ss. 242, 262, 269, “acts in due course of administration”—Where grant of Letters is void ab initio, whether bond also is void.*

Where a person made false representations to the Court and thereby obtained an order granting him Letters of Administration to the estate of deceased person, and induced two other persons to stand surety for him by means of similar misrepresentations and showing them a copy of the said order, whereupon they, in ignorance of the true state of affairs, executed an administration-bond, and letters were issued in his favour.

Held, per MACLEAN, C.J., MITRA and GEIDT, JJ. (HARINGTON and STEPHEN, JJ., Diss.)—The case is not governed by S. 20 of the Indian Contract Act, which says that, where both the parties to an agreement are under a mistake as to a matter of a fact essential to the agreement, the agreement is void. The fact that A was not entitled to the Letters is a fact not essential to the agreement between the Court and the sureties. The Court simply said that it would not issue the Letters of Administration unless A and the sureties gave the bond.

Held per HARINGTON and STEPHEN, JJ.—A mistake as to the authority of the person guaranteed is a mistake on a matter of fact essential to the agreement, because it directly affects the risk undertaken by the sureties. They guaranteed the due performance of the duties of an administrator by a person authorized, for that purpose, by the beneficiaries and not by a person not so authorized. They do not undertake the heavier risk in the latter case. The case, therefore, falls within the scope of S. 20 of the Contract Act (a).

Contract Act (IX of 1872).—(Continued).

A contract may be void so far as the principal debtor is concerned but the surety is not necessarily discharged (b).

Per GEIDT, J.—The mistakes which invalidate contracts of guarantee are specified in Ss. 142 and 143 of the Indian Contract Act. A mistake induced by the principal debtor does not come within the sections. **Debendra Nath Dutt and Banku Behari Banerjee v. The Administrator-General of Bengal**, 8 C.L.J. 422 (F.B.) = 10 C.W.N. 678 = 83 C. 778.

MACLEAN, C. J., HARINGTON, STEPHEN, MITRA and GEIDT, JJ.

References.—(a) 17 W.R. (Eng.), 139 and 2 Q.B. 494, Exp. and D, (b) (1757) 1 Bur. 378 and 19 B. 697, R.

(6) S. 23—*Agreement opposed to public policy—Stifling prosecution—Master taking promise from servant for amount embezzled—*

It is not unlawful for a master to take a promise from a servant or agent for amounts found to have been embezzled by the latter. A mere threat of a prosecution for the embezzlement but for the execution of a promissory note for the amount embezzled, or in case of noncompliance with demands, would not invalidate it. It becomes unlawful and invalid only when the consideration therefor, wholly or partially, is an agreement not to prosecute. **Nanak Chand v. Durant**, 9 P.R. 1906 = 19 P.L.R. 1906.

KENSINGTON and CHITTY, JJ.

Reference.—11 B. 566, F.

(7) S. 23—

The word object in S. 23 of the Act is not used in the same sense as consideration. It means purpose or design. **Jaffar Meher Ali v. The Budge Budge Jute Mills Co., Ltd.**, 10 C.W.N. 755 = 33 C. 702.

SALE, J.

(8) S. 23—*Agreement to finance a suit for a share of profits opposed to public policy when extortionate—Actual amount of loan with interest when recoverable—*

There is nothing illegal in the sale of a claim, when it is sold outright and the opposite party knows exactly what he has to meet (See **Sivaramayya v. Ellamma** (a)). When, however a claim is bolstered up mainly on the chance of obtaining a big profit for the lender, and the nominal plaintiff has little or no interest left in the claim, the matter requires to be scrutinized

Contract Act (IX of 1872).—(Continued)

with very great care. Also, as laid down in *Raja Mohkam Singh v. Raja Rup Sing* (b) it is not gambling in litigation or contrary to public policy for a loan to be given to enable a claimant to prosecute his suit on the *bona fide* belief that that claim has been legally put forward. But, however, in the case of such a contract whereby practically the whole, or much the greater share of the profits of the litigation was to go to the backer and only a small sum to the nominal plaintiff it could be regarded as gambling in litigation and to be void as contrary to public policy (b).

Such agreements when extortionate are in equitable and should not receive effect; otherwise the backer is entitled to recover his expenses with reasonable interest (c). *Stewart v. Ram Chand*, 26 P.R. 1906 = 20 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

References.—(a) 22 M. 310, (b) 15 A. 357 (P. C.); (c) 20 C. 843, II.

(9) S. 23—*Illegal contract—Champany—Agreement against public policy.*

A fair agreement to supply funds to carry on a suit in consideration of having a share of the property, if recovered, ought not to be regarded as being, *per se*, opposed to public policy. Indeed, cases may be easily supposed in which it would be in furtherance of right and justice, and necessary to resist oppression, that a suitor, who had a just title to property, and no means, except the property itself, should be assisted in this manner. But agreements of this kind ought to be carefully watched, and when found to be extortionate and unconscionable, so as to be inequitable against the party, or to be made, not with the *bona fide* object of assisting a claim believed to be just, and of obtaining a reasonable recompense therefor, but for improper objects, as for the purpose of gambling in litigation, or of injuring or oppressing others by abetting and encouraging unrighteous suits, so as to be contrary to public policy, effect ought not to be given to them.

The defendant made a claim for Rs. 3,000 against the National Bank of India, Limited, which was dismissed on a preliminary point.

The plaintiff paid Rs. 200, to the defendant before his filing appeal in his own name against the order dismissing the suit and agreed to pay Rs. 400, on the said appeal being successful and his recovering the decretal amount from the bank and to incur all costs of litigation,

Contract Act (IX of 1872).—(Continued).

and the defendant agreed not to compromise the case. The appeal was allowed and the defendant accepted Rs. 500, from the Bank in full satisfaction of his claim. On the suit of the plaintiff against the defendant, for Rs. 1,500 including expenses and damages, it was pleaded, *inter alia*, that the agreement was opposed to public policy and not enforceable at law.

Held, that the contention was valid; the plaintiff was allowed to recover his expenses with interest at Rs. 6 *per cent.* *M. R. Stewart v. Ram Chand*, 20 P.L.R. 1906 = 26 P.R. 1906.

ROBERTSON and RATTIGAN, JJ.

(10) S. 23—*Partnership agreement by licensee under the Excise Act, whether void as illegal or opposed to public policy.*

The question in this case was whether a partnership of a licensee under Excise Act, XII of 1896, entered into between him and certain other persons was a valid contract or a void agreement. It was contended that the agreement operated as a transfer of the license and was, therefore, void as contravening the rules framed under the above Act and it was *held* that the mere admission of the defendant to a share in the profits of the business cannot be considered as a transfer within the meaning of the rules, since the taking of a partner in business is not very different in its effects from the employment of a servant to be remunerated by a share of the profits.

Held, further, that the agreement cannot *per se* be regarded as opposed to public policy, because the only way to bring it under the section would be to show that it directly infringes some positive rule of law or is calculated to defeat its provisions (a). *Bisheshwar Das v. Govind Ram*, 114 P.R. 1906.

CHITTY, J.

Reference :—96 P.R. 1902, II.

(11) S. 23—*arrangement to secure one creditor an advantage over the others—composition deed—public policy.*

A pro-note executed by defendant, in favour of plaintiff, to induce him to sign a composition deed between the maternal grandfather of the defendant and his creditors, among whom the plaintiff was one, being one executed to carry out an arrangement to secure to one creditor an advantage over the others, is void as opposed to public policy, and the fact that it was not executed by the debtor himself

Contract Act (IX of 1872).—(Continued).

makes no difference (a). **Mahamad Pulavar v. Parameswara Pattar**, 16 M. L. J. 418.

MOORE and SANKARAN NAIR, JJ.

Reference:—(a) 20 M. 86, R.

(12) S. 23—*Contract to sell intoxicating drugs—Breach of contract—Compensation.*

A contract to sell not less than a certain quantity of intoxicating drugs, every year, is contrary to public policy, and compensation for breach of such a contract is not recoverable. **Jugal Kishore v. Mul Chand**, 8 A.L.J. 808.

STANLEY, C.J., & BURKITT, J.

See, also, I, 323 to 324 and I, Act IV of 1884 (*Madras District Municipalities*), No. 1.

(12-a) S. 25—*See* No. 2, *supra*.

S. 25—I, Civ. Pro. Code, No. 35.

(13) S. 25 (3)—*Limitation Act* (XI of 1877).

S. 19—*Acknowledgment—Novation—Construction of document.*

Where, as in this case, a document embodies a promise to pay within the meaning of S. 25, cl. (3) of the Contract Act, and is not a mere acknowledgment of a balance, it will operate as a novation of contract and will be inoperative to give a fresh start for limitation on the already existing cause of action. **Musammatt Mahbub Jan v. Nur-ud-din**, 22 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

(14) S. 23, cl. iii—*Agreement—Contract—Khata signed by the son of the obligee—Promissory Note—Negotiable Instruments Act* (XXVI of 1881).

The defendant signed on the 30th March, 1902, a *Khata* made up after taking accounts in the *Khata* of defendant's father. The *Khata* in question ran as follows:—

"Rs. 291-2 namely (rupees) two hundred and ninety-one and annas two were found due on the account of the previous *Khata* having been made up. For the same, this *Khata* is passed. The same (i. e.) the moneys are payable by me. I am to pay (the same) whenever you may make a demand (thereof)."

Held, (1) that the *Khata* was not a promissory note within the meaning of the Negotiable Instruments Act, 1881.

(2) that it would be a promise within S. 25, cl. (3) of the Contract Act, if it be proved that at the time when the defendant signed the *Khata* he was one against whom the debt might

Contract Act (IX of 1872).—(Continued).

have been enforced but for the law of limitation. **Chandraprasad Narayanas v. Yarasajal Umedram**, 8 Bom. L.R. 644.

JENKINS, C.J. and BHAMAN, J.

S. 27—I, 335.

(15) S. 28 (Exception 1).—an arbitration clause in a contract is lawful as being covered by—*See* ACT IX of 1899 (INDIAN ARBITRATION), No. 2, 28 C. 1169.

(16) S. 30—*Wagering contracts—Agrammets to pay differences—Act III of 1865.*

The law upon the subject of wagering contracts, which is contained in S. 30 and in Act III of 1865, is that the Court must not only consider the terms in which the parties have chosen to embody their agreement, but it must look to the whole nature of the transaction or institution, whatever it may be; and it must prove all the surrounding circumstances, including the conduct of the parties, with a view to ascertain what, in truth, was the real intention or understanding between the parties to the bargain. The actual form of the contract is of little moment, for gamblers cannot be allowed to force in jurisdiction of the Courts by the expedient of inserting provisions, which might, in certain events, become operative to compel the passing of property, though neither party anticipated such a contingency.

In cases of wagering contracts, the Courts should be astute to discover what, in fact, was the common intention of both parties, and to all that is possible, to see through the ostensible, and apparent transaction into the underlying reality of the bargain. **Motilal Partabchand v. Govindram Jalchand**, 7 Bom. L.R. 365=20. B. 83.

BACHELOR, J.

See, also, I, 336.

(17) S. 39—*Refusal, what amounts to—*

Where there was a contract to deliver goods in two instalments and the plaintiff failed to tender for, or take delivery of, the first instalment although the market was in his favour, but, as regards the second instalment, made a tender which the defendants refused to recognise because of such failure.

Held, that, under the circumstances, the conduct of the plaintiff had not amounted to a renunciation, to an absolute refusal to perform the contract, such as would amount to a rescission, and therefore the defendants could not

Contract Act (IX of 1872).—(Continued).

accept it as a reason for not performing his part.

As to what amounts to a 'refusal' in cases of the present class, S. 50 of the Indian Contract Act discussed and the test laid down by Lord Coleridge in *Freeth v. Burr*, L.R. 9 C.P. 208 and adopted by the House of Lords in *The Moresby Steel Co. v. Naylor*, L.R. 9 App. case 484, applied. *Rash Behari Shaw v. Nitya Gopal Mundy*, 3 C.L.J. 249=33 C. 477.

MACLEOD, C. J., and HARRINGTON and STEPHEN, JJ.

(18) Ss. 39 and 61—*Rescission of contract—Compensation for breach of contract—See MORTGAGE (GENERAL)*, No. 12, 87 P.L.R. 1906. Ss. 43, 48—*I, Limitation Act (XV of 1877)*, No. 37.

(19) Ss. 44 & 45—*Suit to recover debt due to a partnership—Contract with one partner only, whether such partner could sue by himself under.*

This was a suit under a contract entered into with the plaintiff, who was one of the partners of a firm. A preliminary objection was urged that the plaintiff, who admittedly had a partner with him, could not sue alone, without joining such partner as co-plaintiff. *Held*, that as, in the present case, the bond sued on was executed by the defendants in favour of the present plaintiff alone, it was competent for him to maintain the suit by himself, without making his partner a co-plaintiff. *Mahr Singh v. Ghela Ram*, 127 P.R. 1906.

CHATTERJI & ROBERTSON, JJ.

References:—7 B. 217, 20 B. 435, 17. B. 418, and 29, 7 C. 739, 18 M. 33, 62 P.R. 1873, 156 P. R. 1889 and 86 P.R. 1891, R.

(20) S. 45—*Suit by partnership—Necessity, as parties, of representatives of a deceased partner—Debt due to partnership when deceased partner was alive.*

The representatives of a deceased partner are not necessary parties to a suit for the recovery of a debt, which accrued due to the partnership during the life-time of the deceased. *Mulk Raj v. George Knight*, 10 P.R. 1906.

KUNNINGHAM and CHITTY, JJ.

References:—9 A. 486; 17 B. 6; 17 M. 108 and 20 A. 365, cited and F., 18 C. 806, distinguished from.

(20-a) B. 45—See No. 12, *supra*.

Contract Act (IX of 1872).—(Continued).

(21) Ss. 46, 49, 94—See *LETTERS PATENT (BOMBAY)*, No. 2, 80 B. 167.

(22) S. 43—See No. 21, *supra*.

(23) Ss. 55 & 107—*Party rescinding contract under S. 55, right of, to re-sell property under S. 107.*

The defendant in this case was at liberty to rescind, under S. 55 of the Act, the contract of sale in question in which time was of the essence. The property, in the goods sold, which had passed to the purchaser, was re-vested in the defendant and he got the right to re-sell them or to do whatever he liked with them. *Held*, in the circumstances, it was unnecessary to go into the question whether the defendant had given reasonable notice of the re-sale within the meaning of S. 107. What S. 107 means is that, if a person, instead of rescinding a contract chooses to re-sell, at the risk of the other party, then, in order to be able to hold the latter liable for any loss on re-sale, he would have to comply with the section by giving reasonable notice to the other side. So, where there has been no occasion at all to resort to S. 107, no notice before the sale should be held necessary. *Nga Shwe Tw v. Nga Chit Son*, 11 B.R. (1906), Contract, 9.

SHAW, J.C.

References —6 C. 64, R.

(24) S. 59—*Appropriation of instalments to the particular periods specified by the person making the payment—Instalments due under one decree—Single debt.*

Where a decree was passed on a compromise, which provided for payment by instalments and for the decree-holder being entitled to recover the whole balance immediately, two consecutive instalments were not paid and where the judgment-debtor paid three out of five instalments, specifying that the payments were to be appropriated to the second, third, and fourth instalments, *held*, that S. 59 of the Contract Act did not justify such appropriation and the decree-holder was entitled to appropriate the payments to the three first instalments and to an order absolute for sale by reason, of the fourth and fifth instalments being overdue. *Fazal Husain v. Jiwani Ali*, A. W. N. (1906), 125=3 A. L. J. 480.

BANKERJI, J.

(25) S. 59—whether arrears of Government revenue are a 'debt' within the meaning of

Contract Act (IX of 1872).—(Continued).

Act XI of 1859 (B.C.)—See ACT XI OF 1859 [REVENUE SALE LAW (B.C.)], No. 1, 10 C.W.N. 948.

(26) S. 64—See No. 18, *supra*.

S. 65—I, 337 and I, Act IV of 1884 (Madras District Municipalities). No. 1 and Act I of 1900 (N. W. P. and Oudh Municipalities), No. 1.

(26-a) S. 68—See No. 3, *supra*

(27) S. 69—Act (Local) No. III of 1901 (United Provinces Land Revenue Act), Ss. 193 and 233—Suit to recover money paid to release property from unlawful attachment—jurisdiction—Civil and Revenue Courts.

The plaintiff sued in a Civil Court to recover money from the defendants on the allegation that certain property belonging to her, having been wrongfully attached in order to realize arrears of Government revenue due from the defendants, she, the plaintiff, had, in order to save her own property, paid the arrears of revenue due from the defendants to Government. *Held*, that the cause of action was a good cause of action, having regard to S. 69 of the Indian Contract Act, 1872, and that jurisdiction of the Civil Court to entertain the suit was not ousted by the provisions of the United Provinces Land Revenue Act, 1901, Ss. 183 and 233 (m). **Tulsha Kunwar v. Jageshwar Prasad**, A.W.N. (1906), 114 = 3 A.L.J. 372 = 29 A. 563.

STANLEY, C.J. and BANERJI, J.

(28) S. 69—Interest in payment—payment of Government Revenue.

Litigation was pending between the parties as to ownership of certain property. Plaintiffs had lost in the Court below and had preferred an appeal. During the pendency of the appeal the plaintiffs had to pay the Government revenue of that property under compulsion. Eventually they lost the suit. *Held*, that the plaintiffs were interested in the payment of the money which the defendant was bound to pay and were, therefore, entitled to recover it from the defendant. **Khushal Singh v. Khawani Lal** 3 A. L. J. 665 = A. W. N. (1906), 282.

STANLEY, C. J., & RUSTOMJEE, J.

Reference :—3 A. L. J. 372, F.

(29) S. 69—Land registered in plaintiff's name, but belonging to and in possession of the defendant—Voluntary payment of kist

Contract Act (IX of 1872).—(Continued).

by plaintiff—Suit to recover kist amount—Revenue Recovery Act (II of 1864, Madras).

Where land is assessed for revenue, the owner thereof cannot, by virtue of his ownership alone, be held as compellable to pay the revenue. The right of the Government to proceed for the recovery of revenue is regulated by the Revenue Recovery Act. The property of the land-holder *i. e.*, the registered holder, as well as the land, on which the arrear is due, may be seized and sold and such holder may also be arrested and confined. But, as against an owner of land, who is not a registered holder, the same remedies are not available and neither his property, other than the land in regard to which the arrear has accrued, nor his person, can be proceeded against. No doubt, if the land liable for the revenue is sold in due course of legal process, the unregistered owner's right to the land would be lost. But, that shows nothing more than that it would be to his interest to pay up the arrear of revenue. Consequently, such arrears cannot be said to be what the owner is bound by law to pay, within the meaning of S. 69 of the Contract Act.

Where, therefore, the plaintiff sued to recover from the defendant the amount voluntarily paid by him on account of the revenue due in respect of certain land which stood registered in his name, but which belonged to the defendant and was in the latter's possession when the money was paid, *held* that the claim was unsustainable, under S. 69 of the Contract Act, as the demand for the revenue was one which the defendant was not bound to meet. **Boja Sellappa Reddy v. Yridhachalla Reddy**, 1 M. L. T. 323.

SUBRAHMANYA AYYAR, J.

See, also, I, 339.

S. 70—I, 340 & 341.

Ss. 70 & 72—I, Act I of 1900 (N. W. P. and Oudh Municipalities), No. 1.

(30) S. 72—Mistake of fact, right of person having paid money under, to get the money refunded.

Petitioner, who was a lessee, was induced, on the death of his lessor, to take a lease of the same property from the widow of the latter, and was subsequently regularly paying the rent to the widow. The executors of the deceased lessor, however, sued and obtained a decree

Contract Act (IX of 1872).—(Continued).

against him, for the full amount of the rent, in arrears, since the death of the lessor. Petitioner now claimed a refund of the sums paid to the widow, but his suit was dismissed on the ground of the absence of any express undertaking or agreement to make any such refund. *Held*, in face of S. 72 of the Act, it was not necessary that there should be an express agreement to refund the money, which had been clearly paid to the widow under a mistake. **Ram Kishan v. Rani Bhagwan Kaur**, 181 P.R. 1906.

RATTIGAN, J.

References:—L.R. 2 H.L. 149 & 80 P.R. 1895, F.

(31) S. 73—Refusal by tenant to take the houselet—Damages—See LANDLORD and TENANT, No. 17, 137 P. R. 1906.

See, also, 1, 342.

(32) S. 74, explanation, effect of—Stipulation by way of penalty—Power of Court—See MORTGAGE (GENERAL), No. 23, 29 M. 491.

(33) S. 74—Penalty—Interest—Stipulation to pay higher rate—Rate originally contracted for—Subsequent reduction.

A sum of money was borrowed at a certain rate of interest. Subsequently, on a settlement of accounts between the parties, it was agreed that a lower rate of interest would be chargeable on the amount remaining due, if paid within a certain date; but if not so paid, the higher rate originally contracted for would be payable.

Held—That the stipulation for the payment of interest at the higher rate cannot be regarded as a penalty, that being the rate originally contracted for.

Where the parties are *sui juris* and there is no question of fraud or oppression or improper dealing or undue influence, they are competent to make, and must stand by, their own bargain. **Kirti Chunder Chatterjee v. J. J. Atkinson**, 10 C.W.N. 640.

MACLEAN, C.J. and GEHDT, J.

(34) S. 74—Interest—High rate—Penalty.

A stipulation for the payment of interest at the rate of 75 per cent. per annum from the date of the bond, on failure to pay the principal amount in two instalments on dates as fixed in the bond, was *held*, in the circumstances of the case, to be a penalty.

Contract Act (IX of 1872).—(Continued).

It is open to a Court to consider the facts and circumstances of each case and determine whether a stipulation for a high rate of interest is or is not a penalty, its finding on the question being rather a finding of fact than of law. **Miajan Patari v. Abdul Jubbar**, 10 C.W.N. 1020.

RAMPINI and GEHDT, JJ.

See, also, I, 342.

(35) Ss. 77, 78—Sale of goods to be paid for in cash against mate's receipts—Bills of lading obtained by purchaser in exchange of the receipts before payment—Pledge of the bills to a bank by purchaser whether valid and binding on seller.

Plaintiffs sold bales of jute to the defendant firm, the goods to be placed alongside the exporting vessel and to be paid for in cash against mate's receipts. The goods were, subsequently, shipped and two mates' receipts in the name of the defendant firm were obtained by the plaintiffs. Plaintiffs alleged that those mates' receipts were handed over to the firm together with a bill for payment but the firm, fraudulently and without paying for the goods, presented the receipts to the agents of the ship and obtained bills of lading in respect of the goods mentioned in the receipts and pledged the bills of lading wrongfully with the defendant bank. In the present suit, plaintiffs claimed, as owners of the goods, to recover from the defendants, the firm and the bank, the goods sold or the documents representing them or, in the alternative, for payment of the price of the goods as damages. *Held*, on the question whether, under the circumstances, the property in the goods passed to the defendant firm, that there was abundant *prima facie* evidence that the goods in question were appropriated to the contract by the plaintiffs and that such appropriation was assented to by the defendant firm. The sale, therefore, was complete and involved, in the words of S. 77 of the Indian Contract Act, the transfer of the ownership of the goods from the plaintiffs to the defendant firm (a).

Plaintiffs, further, contended that, assuming such transfer of ownership to have been established, the title of the defendant firm to deal with the bills of lading was still incomplete and infirm, and that such infirmity of the title vitiated the pledge to the defendant bank but, it was *held* that, by the above transfer of ownership, the firm acquired the right to dispose of

Contract Act (IX of 1872).—(Continued).

the goods as owners and, in obtaining possession of the mate's receipts, obtained the means of exercising such rights and in procuring the bills of lading they simply exercised such right and held the bills as owners and pledged them in that capacity to the bank. The breach of trust or undertaking, on the part of the firm in having procured and parted with the bills of lading would be immaterial, so far as regards the defendant bank, who acted in good faith in their transactions with the firm. The pledge of the goods with the bank was, therefore, a valid and binding transaction and accordingly the suit as against the bank must be dismissed with costs. **Juggernath Angurwallah v. E. A. Smith**, 38 C. 547.

SALK, J.

References.—(a) 32 C. 816, R. 4 Q.B.D. 39, 35; 24 C. 177, 178, R., 3 Ex. D. 164, 171, D.

(36) S. 78—See No. 85, *supra*.

See, also, I, *Insurance*, No. 1.

(37) S. 94—See No. 21, *supra*.

(37-a) S. 107—See No. 23, *supra*.

Sa. 106, 108—I, 343.

S. 108. „ „

S. 130—1, *Act V of 1881 Probate and administration*, No. 9.

(38) S. 134—*Creditor's claim against principal debtor barred by time—Effect of such bar on the liability of the sureties.*

Plaintiff-appellant, M, sued on a bond, by which his debtor, C, undertook to repay a loan. By the same bond, two persons, now represented by the minor respondent, stood as sureties, mortgaging certain property of theirs to further secure payment in the event of default by C. The claim of M was found to be time-barred as against C, but it was pressed on appeal that the lower Courts were wrong in holding that as against the sureties also, the plea of limitation must prevail. *Held*, in concurrence with the lower Court, that the creditor's allowing the ordinary period for suing the principal debtor to pass without suit, is in effect to give that person an absolute release from liability, and, on such an absolute release of the principal debtor, the remedy against the surety is gone, because the debt is extinguished. The mere fact of the sureties having given a mortgage does not warrant the conclusion that the surety contemplated prolongation of his liability over the long period allowed, for bringing a suit

Contract Act (IX of 1872).—(Continued).

for foreclosure. To extend the time, originally allowed for payment, is to vary the surety's position by prolonging his liability beyond what was originally contemplated. The creditor's failure to sue his principal debtor, within the period of limitation allowed, has the effect of discharging the surety under S. 184 of the Indian Contract Act and the forbearance mentioned in S. 187 of the Act applies only to a forbearance during the period allowed by the law of limitation for suing the principal debtor. **Mahomed Shareef v. Chaitu**, 2 N. L. R. 49.

DRAKE-BROCKMAN, A. J. C.

References.—11 A. 810, 24 A. 504, F., 5 B. 647, 12 C. 880, R.

(39) S. 135—*Execution of decree—Surety, discharge of, by giving time to principal debtors.*

Held, that, in a case where a decree is passed to the effect that, if it remained unsatisfied after execution had been taken out against the principal judgment-debtors, the appellant who was a surety, would be responsible for the debt, the liability of the surety was not discharged by the decree-holder's giving time to the principal judgment-debtors to pay up the decretal amount, because S. 135 of the Act does not apply to claims which have been decreed. **Farbhu Dayal v. Ram Ratan**, 9 O. C. 28.

SCOTT, J. C.

(40) S. 143—See No. 5, *supra*.

(41) S. 144—See No. 5, *supra*.

(42) Sa. 151 & 161—*Bailee when not liable for loss of thing bailed*—See CIV. PROC. CODE, No. 28, 70 P. R. 1906.

(43) S. 161—See CIV. PROC. CODE, No. 28, 70 P. R. 1906 and No. 42, *supra*.

(44) Sa. 187, 188—*Principal and Agent—Agents's power to borrow for the principal—Liability of principal.*

Suits were brought against one F, a proprietor of certain silk factories, and another M, on account of sums of money lent to the latter, who was the agent of the former. The Subordinate Judge decided that F alone was liable to the plaintiffs for the loans contracted by his agent, M, holding that even if M had applied for his own use the moneys alleged to have been borrowed by him for F, that circumstance could not affect honest third parties like the plaintiffs. M might be liable to F for these moneys

Contract Act (IX of 1872).—(Continued).

but F was entirely liable to the plaintiffs. F preferred the present appeal from the said decree against him. One of the questions for determination was whether M had authority, express or implied, to borrow money so as to bind F. It was not disputed that M had no written authority to borrow, because the power of attorney executed in his name by F gave no such authority; but the plaintiffs contended that, by reason of his position, M had an implied authority to borrow and they placed reliance for their contention on Ss. 187 and 188 on the Act. *Held*, though the said sections contain provisions authorizing a manager to borrow, if necessary, yet such general provisions are subject to modifications in particular cases, and, in this case, since there is nothing in its circumstances from which it could be inferred that the agent possessed any power to borrow the said provisions have to be regarded as so modified. *Ferguson v. Um Chand Bold*, 88 C. 343.

GHOSH and PARFITER, JJ.

(45) S. 188—See No. 44, *supra*.

Ss. 188 and 189—*I*, 344.

S. 213—*I*, *Limitation Act*, No. 70.

Ss. 230 and 230 (1)—*I*, 346.

(46) Ss. 240 and 245—*Partnership, tests of—Participation in profits by lender—Taking active interest in business—Holding out as partner to strangers—Estoppel—Intention—Evidence Act (I of 1872)*, S. 115.

The right to participate in the profits of trade is in itself a strong test of partnership; but participation in profits, although strong evidence is not conclusive evidence of a partnership and the question of partnership must be decided by the intention of parties to be ascertained from the contents of the written instruments, if any, and the conduct of the parties.

It being established in this case with regard to a person's relation towards a business carried on with his money, that he was a mere lender;

held, that neither the fact of his participating in the profits nor that he took an active interest in the business were inconsistent with his position as a lender (a).

Where the question was as to whether a person, though not in fact a partner, did by his acts and conduct hold himself out to strangers as such, so as to become liable by estoppel;

Contract Act (IX of 1872).—(Concluded).

held, that to establish such liability, it was not essential to show that he acted fraudulently or negligently. Even want of knowledge on his part of the effect of his acts and conduct would not absolve him from liability, if his acts and conduct were such as would induce a reasonable man to believe that he was a partner and to act upon such belief (b). *Colonel A. R. Patter v. W. Inceall*, 10 C. W. N. 818.

MITRA and CAMPBELL, JJ.

References.—(a) 10 B. L. R. 312 and 88 Ch. D. 288, *P.* (b) 19 I. A. 208; 4 H. and N. 549; L. R. 10 C.P. 316 and 10 R. and C. 128, *Refd. to*.

(47) S. 245—See No. 46, *supra*.

(47-a) S. 247—See No. 8, *supra*.

(47-b) S. 248—See No. 8, *supra*.

(48) S. 261—*Partnership—Death of a partner—Liability of his estate for subsequent losses—Heir not liable unless he assents and substitutes himself in the place of the deceased—Minor heir—Construction of a clause in the partnership deed.*

Prima facie, death involves a dissolution of the partnership.

Under S. 261 of the Indian Contract Act, 1872, even if a partnership continues after the death of a partner, the estate of the deceased is not liable in respect of subsequent obligation, in the absence of an express agreement:

held, on a construction of a clause in the deed of partnership that it was a provision entitling the heirs of a deceased partner to come into the partnership in place of the deceased partner, under whom they claimed as heirs, and that it did not impose an obligation on the estate.

If, and so far as it becomes operative, it makes the heirs partners, and as such personally liable. But liability cannot be imposed upon an heir unless he assents to it. So that in order to render any heir of a deceased partner liable towards the other partners, it is necessary to establish that the heir had come in and become a partner, or in other words, had in circumstances of the case, taken an advantage of the liberty reserved in his favour of joining the partnership in the place of the partner dying.

The heirs of one of the deceased partners, being minors, *held*, that it had been impossible for them to take upon themselves the liability of the partnership. *Mulechand Marotham v. Maneekchand Harjivan*, 8 Bom. L.R. 8

SIR LAWRENCE JENKINS, C.J., & RUSSELL, J.

Contract Act (Travancore).

- (1) S. 55—*Sale, payment of vendor's debts forming the consideration for—Presumption as to time being of the essence of the contract—Right to rescind on non-payment of the debts.*

Where the purchase-money under a sale deed has been reserved for the payment of the debts of the vendor, as expressly recited in the deed, time must be presumed to be of the essence of the contract (a) and so, where, in the absence of any agreement for the postponement of such payment the vendees fail to make the same, on the general principles embodied in S. 55 of the Act, the vendors have the right to avoid the contract of sale.

Held, also, where the intention of the parties has only been a ready payment of the consideration and the vendee has failed to act up to that intention, mere registration cannot complete the sale, which may be avoided by the vendor in consequence of the vendees' failure. (b) **Eapen Mathai v. Aiyappan Mathavan**, 21 T. L. R. 119.

GOVINDA PILLAI, HUNT & PADMANABHA AIYAR, JJ.

References:—(a) 30 C. 276, R. (b) 17 M. 146, 21 M. 56 & 27 C. 7, D.

- (2) Ss. 69, 70—"person interested in the payment, meaning of in—Quasi Contract—Negotiorum gestor, rights of.

Suit to recover, from defendants, the expenses incurred by plaintiff in having celebrated a festival in a *Sirkar* temple. Plaintiff alleged that the defendants, who were bound in duty to perform the festival, were not prepared to celebrate it, and so he incurred the expenses and conducted the festival for them, on orders from the *Sirkar*. *Held*, plaintiff was not entitled to recover the costs incurred by him. His position, at best, was only that of an agent under the *Sirkar*, to whom the temple belonged. Nothing could be claimed by him from the defendants, who did not owe any duty to him legally or morally.

Held, also, the plaintiff could not be said to have had any 'interest', in having made the payment sought to be recouped, within the meaning of the term in S. 69 of the Act.

Held, further, that the defendants having previously declined to be liable for the entire costs of the festival, no action can be maintained against them by plaintiff, the *negotiorum gestor*, charging them with liability in respect of an act done as against their consent (a), nor

Contract Act (Travancore).—(Concluded).

could the plaintiff, therefore, claim as under the provisions of S. 70, since he performed the act and underwent the expenses in spite of the defendants' open and avowed disclaimer of their duty to pay the high rates of expenses claimed by him. **Easwaran Perumal Namblar v. Kanuku Sivagurunathan Padmanabhan**, 21 T. L. R. 142.

GOVINDA PILLAI and RAMACHANDRA ROW, JJ.

Reference:—(a) 18 M. 93, F.

(2-a) S. 70—See No. 2, *supra*.

- (3) Ss. 235, *unauthorized agent untruly representing himself as authorized, effect of failure of contract by—Damages awardable.*

The questions for decision in this case were (1) whether defendant, as the pretended authorized agent of his wife, entered into the contract of sale as alleged by the plaintiff and, (2) on the failure in the fulfilment of the contract, what damages the plaintiff was entitled to. *Held*, that the defendant, untruly representing himself to be the authorized agent of his wife, promised to procure a sale of the plaint properties, from his wife, in favour of plaintiff and induced the latter to advance him money for the consideration and that defendant was, therefore, liable under S. 235 of the Act to make good the damage thereby caused by him to the plaintiff.

On the question relating to the measure of damages, it was *held*, that the damages, that the party entitled thereto should receive, on breach of a contract, should be such, as may fairly and reasonably be considered, either as having arisen naturally from such breach, or as likely to have been in the contemplation of the parties as the probable result of such breach. (a) The damages on account of loss of profits claimed by the plaintiff, in this case, was therefore, not awardable, the same not forming the natural result of the alleged breach of contract. **Haji Eak Kasim Sett v. Nagendra Pal Krishna Pattar**, 21 T. L. R. 78.

GOVINDA PILLAI, HUNT and PADMANABHA AIYAR, JJ.

Reference:—(a) 23 L. J. Ex. 182, R.

Contribution.

- (1) Suit for—by one of the defaulters on his purchase of the *putni* at a sale under the Regulation—SEE REGULATION (VIII OF 1819), No. 7, 3 C. L. J. 98.

Contribution.—(Concluded).

(2) Suit for—by one of the judgment-debtors after satisfying entire joint decree—Cognizability of suit by a Small Cause Court—See SMALL CAUSE COURTS PROVINCIAL (ACT IX OF 1887), No. 12, 3 A.L.J. 6.

(3) Two properties mortgaged— one sold to satisfy a prior claim— liability of second property alone—See MORTGAGE (CONTRIBUTION), No. 1, 3 A.L.J. 439 and see, also, No. 3, 3 A.L.J. 441, *Ibid*.

(4)—See TRANSFER OF PROPERTY ACT, No. 36, 9 O.C. 259.

(5) Liability of mortgaged properties to second mortgage-debt, when first mortgagor has purchased and obtained possession of mortgaged properties in a sale in execution of his own decree on the first mortgage—See TRANSFER OF PROPERTY ACT, No. 63, 4 C.L.J. 317.

(6) Suit for—in respect of several properties liable for the payment of an annuity—See LIMITATION ACT (XV OF 1877), No. 65, A.W.N. (1906), 216.

(7)—by reason of purchase by decree-holder of some of the mortgaged properties, to be worked out in a separate suit and not in execution-proceedings—See MORTGAGE (GENERAL), No. 22, 4 C.L.J. 573.

See, also, I, 346; Contract Act, Nos. 21 and 22; Civil Code, No. 206 and Transfer of Pro. Act, Nos. 40 and 95.

Conversion.

(1)—of stolen goods—Managing partner receiving the goods—Evidence of conversion—Liability of firm—Damages, measure of—

Where the managing partner of a defendant firm had, without the knowledge and consent of the other partner, received certain piece goods belonging to the plaintiff knowing that they had been stolen and had, within the scope of his authority, sold some of the goods and where there were entries in the books of the firm showing that a portion of such sales was placed to the credit of the firm.

Held—That the plaintiff can recover from the defendant firm as damages for conversion the value of all the goods belonging to him which had come into the hands of the managing partner. *Hurruck Chand v. Gobind Lal Khetry*, 10 C. W. N. 1058.

HARRINGTON, J.

Conversion.—(Concluded).

(2)—of wife dissolves marriage—Effect on decree for restitution of conjugal rights passed before conversion—See MUHAMMADAN LAW (MARRIAGE), No. 3, 148 P. L. R. 1906.

See, also, I, *Hundi*, No. 1.

Converts.

(1) Co-partnership between persons converted from the Hindu religion.

Partnership can be a part of the law governing the rights of a Christian family converted from the Hindu religion. *Francis Ghosal v. Gabril Ghosal*, 8 Bom. L. R. 770.

JENKINS, C. J., and BEAMAN, J.

References :—9 M. I. A. 195, 12 C. 706 and 23 B. 80, R.

(2) Marriage between Hindus—Nature of marriage contemplated by the Divorce Act—See ACT IV OF 1869 (DIVORCE), No. 1, 8 Bom. L. R. 856.

Co-owners.

Mortgage of joint property by some out of several co-owners, validity of—See MORTGAGE (GENERAL), No. 17, 4 C.L.J. 543.

See, also, *Joint Property*, Nos. 1 to 4.

Copyright Act.

See ACT XX OF 1847.

Corporation.

See I, *Civil Pro. Code*, No. 243.

Corporation of Bombay.

See I, *Act I of 1874 (Bombay)*, No. 1.

Co-sharers.

(1) Separate collection of rent—Suit by all the co-sharers for entire rent—Maintainability—*Bengal Tenancy Act (VIII of 1885)*, S. 188.

Where it appeared that some of several co-sharer landlords had been collecting their portion of the rent separately for 25 years, but there was no division of the tenure :

Held, that there is nothing to prevent the co-sharers from reverting to their original condition if they are all agreed ; and a suit brought by all the co-sharers for the recovery of the entire rent is maintainable.

An arrangement, under which fractional shares of the rent are paid separately to different co-sharers, does not bind the parties for all time, and may be put an end to by the tenants or by the landlords collectively, though not by one of

Co-sharers. — (Concluded).

the landlords against the consent of the others (a). **Shyama Charan Bhattacharya v. Akhoy Kumar Mitter**, 10 C. W. N. 787.

PRATT, J.

References.—(a) 4 C. 96, 17 C. 695 and C. 9 W.N. 84, R.

(2) *Profits, suit for—Mortgage of co-sharer's shares to be joined as defendant in a suit for profits.*

In a suit for profits by a sharer against another co-sharer, who has mortgaged his share to a third party, and when both mortgagor and mortgagee are in possession, both may, at the option of the plaintiff, be impleaded as defendants. **Thakur Bakhsh v. Bhagwan Din**, 9 O.C. 142.

CHAMBER, J.C.

(3) *Khas-possession of land, suit for by, co-owner in symbolical possession—Exclusive possession by other co-sharers, whether adverse—Cause of action—Meane profits.*

Where a plaintiff after obtaining symbolical possession of a 10-anna share of some land, which was in the actual possession of other co-sharers, took no steps for obtaining actual possession or a partition, but brought a suit for joint-possession with his co-sharers and for meane-profits;

held, that there being no subsequent dis-possession of the plaintiff, the possession of the other co-sharers was not adverse to that of the plaintiff; consequently, no suit for joint possession would lie, but that the plaintiff was entitled to her share of the profits which the defendants received from the lands (a). **Amba Debys v. Jnanoda Sundari**, 4 C. L. J. 254.

MACPHERSON and STEVENS, JJ.

Reference.—(a) 18 C. 10, N.

(4) *Per MOOKERJEE, J.*—The plaintiff who complains of the act of his co-owner cannot obtain a decree for demolition of buildings or for joint possession, unless he can establish that he has sustained some substantial injury by reason of the act of which he complains. The Court will not interfere unless it is proved that injury has accrued to the plaintiff by reason of the erection of the building and that he took reasonable steps in time to prevent the erection. **Ananda Chandra Sen v. Parbati Nath Sen**, 4 C.L.J. 198.

RAMPINI AND MOOKERJEE, JJ.

Co-sharers.—(Concluded).

References.—14 C. 189, 14 C. 236, 4 C.W.N. 788, 28 C. 923, 33 C. 500, 36 C. 901, R. and 1 C.L.J. 437, cited and F.

(5) *Rent suit for—Co-sharer landlords—Separate collection, effect of—Right to sue jointly for whole rent—Implied contract.*

From the mere fact that the co-sharer landlords have for a long period collected their shares of the *jama* separately, it cannot be inferred that the parties contracted that separate collection should go on for ever. There is nothing therefore to prevent the co-sharer landlords from joining to sue for the whole rent. **Akhoy Kumar Mitter v. Gopal Kamini Dehl**, 10 C.W.N. 952=38 C. 1010.

RAMPINI AND WOODROFFE, JJ.

References.—4 C. 96, 17 C. 695, 9 C. W. N. 84, 10 C. W. N. 787 and 3 C. L. J. 879, R.

(6) *Partition—Buildings belonging to one party on land apportioned to another.*

In accordance with a partition made among co-sharers in the year 1901 under the orders of the revenue authorities, certain buildings erected by the defendants while the property was undivided fell into the plaintiffs' share. No ground rent was fixed under section 124 of the Land Revenue Act, 1878. The plaintiffs sued for recovery of possession of the land covered by the defendants' buildings and for their demolition.

Held, that the fact that the land occupied by the defendants' buildings had been allowed to the plaintiffs on partition conferred on the latter no right to seek for their demolition, though it was still open to the plaintiffs to ask the revenue authorities to assess the ground rent on the defendants' premises. **Iswar Parshad v. Jagannath**, A.W.N. (1906), 194.

BANERJI, J.

(7) *Suit for possession—Alternative claim to be put into joint possession—*

Where a co-sharer sues for exclusive possession and in the alternative for joint possession, the proper order to make is a decree declaring the rights of the parties.

A co-sharer is not entitled to a decree for joint possession. **Dhanraj Pandain v. Shree Raj Pande**, A.W.N. (1906), 194.

RICHARDS, J.

Reference.—A.W.N. (1906), 923, F.

Co-sharers.—(Continued).

- (8) Decree for rent against registered tenant—
Private sale of tenant's interest prior to
suit—Sale in execution of decree if affects
the purchaser's rights.

When certain co-sharer landlord instituted a suit for the rent of jote, making all persons interested in the jote parties defendants, and obtained a decree, a sale in execution of the decree, passed the entire jote to the purchaser. But a sale in execution of a decree for rent obtained by the same landlords in a suit subsequently instituted against the purchaser, but after the latter had parted with his interest in the jote to a third party, did not affect the rights acquired by such third party by his purchase. The fact that such third party had not got his name registered in the zemindar's *sherista*, in place of the first purchaser was immaterial as at the second auction-sale, only the right, title and interest of the judgment-debtor was sold. **Umash Chandra Roy v. Gour Lal Chaudhury**, 10 C.W.N. 1042.

GHOSH and PARUITER, JJ.

(8-a) Whether a decree obtained by a co-sharer is evidence as regards rate of rent—See **EVIDENCE**, No. 2, 10 C.W.N. 1084.

(9) Suit for arrears of rent or suit for settlement of account—See **LANDLORD and TENANT**, No. 5, A. W. N. (1906), 141.

(10) Ordinarily the possession of one co-sharer is the possession of all—See **ADVERSE POSSESSION**, No. 5, 39 P.L.R. 1906.

(11) Suit by one of several—for joint possession of one of several properties belonging in common to himself and other co-sharers—Maintainability of such suit—See **RIGHT OF SUIT**, No. 4, 43 P. R. 1906.

(12) Sale to stranger with concurrence of—Purchase by such co-sharer—Maintainability of suit for pre-emption. See **PRE-EMPTION**, No. 39, 8 A.L.J. 794.

(13)—in joint enjoyment of property, right of to joint possession—See **JOINT PROPERTY**, No. 1, 88 C.1901.

(14) Competency of, to divide among themselves common village land for tethering cattle on—See **PARTITION**, No. 2, 132 P. R. 1906.

(15) Suit for rent by—Liability of joint property for rent—See **LANDLORD and TENANT** No. 4, 32 C. 567.

See I, 345 to 351; I, Penal Code No. O.; Partition Decree, No. 1; Pre-emption, Nos. 3 and 4; Civil Pro. Code, No. 306.

Co-sharer and Lambardar.

See I, Lambardar, No. 1.

Costs.

- (1) General rule—Arbitration—Award silent as to costs—Appeal.

In a suit filed in *forma pauperis*, the whole case was referred to arbitration. The award allowed about one-third of the claim but was silent as to costs. The Court, in passing decree in accordance with the terms of the award, awarded full costs to the plaintiff.

Held, on appeal, that the order of the lower Court as to costs was wrong. The Chief Court ordered the parties to bear their own costs. **Kartar Singh v. Faqir Singh**, 35 P.L.R. 1906.

KENSINGTON and CHITTY, JJ.

- (2)—when payable out of the testator's estate in a suit for construction of Will—

The costs of the entire litigation should be paid out of the estate where difficulty has been created and litigation, in a manner, rendered necessary by the act of the testator, viz., by reason of the ambiguity or inconsistency in the provisions of his Will (a). **Srinibash Das v. Monmohini Dasi**, 3 C.L.J. 224.

RAMPINI and MOOKERJEE, JJ.

References.—(a) (1874) L.R. 7 H.L. 364. F.

(3) Order for depositing additional—of commission, whether enforceable when not entered in the decree—See **CIV. PRO. CODE**, No. 226, 10 C.W.N. 284.

(4)—on appeal from an order merely dismissing a suit under S. 113, C.P.C., to be taxed on the footing of an appeal under S. 588, C.P.C.—See **CIV. PRO. CODE**, No. 87, 16 M.L.J. 80.

(5) No appeal lies against a Court's directions in a compromise-decree in respect of—omitted to be provided for in the agreement between the parties—See **APPEAL (GENERAL)**, No. 4, 2 N. L.R. 49.

(6) See **PRE-EMPTION**, No. 35, A.W.N. (1900), 198.

(7) Court's power to extend time for payment of—when suit withdrawn with liberty to bring a fresh suit—See **CIV. PRO. CODE**, No. 218, 29 M. 370.

See, also, I, Civil Pro. Code, Nos. 50, 69 and 104; Act V of 1881 (*Probate & Administration*), No. 2; Right of suit, No. 21; Transfer of Property Act, No. 18 and I, 351-354.

Co-tenant—See I, Co-sharers, No. 7.

Council.

Wrong advise of—whether sufficient cause within the meaning of S. 5 of the Limitation Act—See LIMITATION ACT, No. 5, 3 A. L. J. 218.

Counsel.

Certifying—in Chamber matters—Practice—What circumstances are taken into consideration by Court—See PRACTICE (HIGH COURT), No. 1, 7 Bom. L. R. 753.

Counsel's Fees.

See 1, Costs (Civil Cases) No. 7.

Court.

(1) Agreement of parties to refer question to Court for decision—Decision, if appealable—acting as arbitrator—Extra cursum curiae.

In the course of a suit for recovery of possession of some land, the parties who owned different shares of a Pergunnah came to an agreement to the effect that they should ask the Court to decide the question of title on the basis of the *thakbust* map only, and the plaintiff said he would abide by that decision. The Court decided accordingly and held that "the *thak* map itself showed that the plaintiff's predecessor and his co-sharers were disputing about the land and the survey map showed that it was newly formed *chur* land, and that, in such circumstances, the *thak* map could not be held sufficient evidence of plaintiff's title."

Held—That in deciding the question on the basis of the *thakbust* map, in accordance with the agreement of the parties, the Court acted as arbitrator, and hence no appeal lay from that decision. **Kumar Saradindu Roy v. Bhagabati Debya Chowdhuranl**, 10 C.W.N. 835.

GHOSE and CASPERAZ, JJ.

(2) Inherent power of—to revise its own order made *ex parte*—See CIV. PRO. CODE, No. 3, 3 C.L.J. 276.

(3) Inherent power and duty of—to act according to equity and good conscience in cases for which no express provision is made—See ACT VIII OF 1890 (GUARDIAN AND WARDS) No. 1, 3 C.L.J. 29.

(4) Inherent power of—to set aside *ex parte* to orders for execution of conditional decrees—See EXECUTION OF DECREE, No. 1, 10 C.W.N. 606.

(5) Power of—to extend time provided in S. 89 of the Transfer of Property Act—See TRANSFER OF PROPERTY ACT, No. 82, 10 C.W.N. 910.

Court.—(Concluded).

(6) Duty of, to amend plaint when necessary on order for payment of additional Court-fees. See COURT FEES, No. 5, 21 T.L.R.1.

(7) Power of—to grant relief under a compromise different from that asked for in the plaint—See CIV. PRO. CODE, No. 220, 16 M.L.J. 354.

(8) Settlement—, whether can act under verbal instructions from a superior settlement Court—See ACT XVI OF 1865 (N.W.P.), No. 1, 9 O.C.301.

(9) Power of, to call for and impound documents not put in evidence—See STAMP ACT (II OF 1899), No. 7, 181 P. L. R. 1906. (F. B.)

(10) A—cannot review its own decree, subsequent to dismissal of appeal therefrom—See CIV. PRO. CODE, No. 290, 4. C. L. J. 566.

(11) Adjudication of Collector as to amount of duty chargeable how far binding on—See STAMP ACT (II OF 1899), No. 7, 181 P. L. R. 1906 (F. B.)

See, also, I, Civil Pro. Code, Nos. 154, 247 and 250; Contract, No. 1; Guardian and Wards Act, No. 1; Execution of Decree, No. 16; Fraud, No. 10; Jurisdiction (of Civil Courts), No. 46; Legal Practitioners, No. 1; Receiver, No. 1; Practice (Misc. Cases), No. 0, and Specific Relief Act, No. 12.

Court Fees.

(1) Payment of—for set-off claimed in a written statement—See CIV. PRO. CODE, No. 85 10 C. W. N. 199.

(2) The right of the Crown, in a suit *in forma pauperis* to be paid its—in preference to all other creditors—See CIV. PRO. CODE, No. 232, 10 C. W. N. 857.

(3) Purchase by mortgages, in execution of decree, of mortgaged property—value of property for purposes of—See MORTGAGE (GENERAL), No. 13, 10 C.W.N. 1010.

(4)—payable in suits under S. 539, Civ. Procedure—See CIVIL PROCEDURE CODE, No. 276, 2 A.L.J. 591.

(5) Suit for damages, Title to land sought to be established in—Payment of additional fees—Duty of Court to amend the plaintiff appropriately.

This suit was one for damages for defendant's wrongfully harvesting and remov-

Court fees.—(Concluded).

ing, crops from plaintiff's lands. The plaintiff's title to the lands themselves was in dispute. The question for decision was whether a plaintiff, whose title to lands is in question, can frame his suit for a minor relief alone so as to avoid payment of higher Court-fee and whether such a plaintiff can be compelled to amend his plaint and pay the higher fee. *Held*, that, in pursuance of a uniform course of decisions of the High Court of Travancore, the Court ought to ascertain the real object of the suit and, when it does ascertain, as it did in this case, that the object of the plaintiff is to evade payment of a higher Court-fee by framing his suit as for a minor relief only, to compel him to amend his plaint and the pleadings and to pay the higher duty, having regard to the value of the subject-matter of the suit. **Mathooni Thommen v. Raman Narayanan**, 21 T.L.R. 1.

See I, Civil Pro. Code, Nos. 231 and 246; Execution of Decree, No. 24; Limitation Act, No. 102.

Court Fees Act (VII of 1870).

(1) *Appeal from decrees under S. 330, Civil Pro. Code, directing surrender of possession Ad valorem Court fees payable on.*

Where a person obstructed the execution of a decree for possession of property and his claim was registered as a suit under S. 330, Civ. Pro. Code, which resulted in a decree directing him to deliver up the property; *held*, that the stamp-duty payable on his appeal from such decree was the *ad valorem* fees in respect of the properties the decree directed surrender of (a). **Balasundara Mudelly v. Rajalingam Chettiar**, 29 M. 172.

SUBRAHMANIA AYYAR, OFFG. C.J. and SANKARAN NAIR, J.

References.—(a) 8 C. 720, 10 B. 238, F. 4 M. 420, D.

(2) *S. 1, Art. 1—Sch. ii, Art. 11—Order directing an award to be filed—C.P.C., S. 526—Order having the force of a decree.*

The present appeal was brought against a judgment and decree directing that an award, made on a reference to arbitration by the parties without the intervention of a Court of justice, be filed under S. 526 of the C.P.C. The decree was for a recovery of a sum of money. The appeal memorandum was stamped with a stamp of Rs. 2, as for an appeal falling with-

Court Fees Act (VII of 1870).—(Continued).

in Art. 11 of Sch. II of the Act. *Held*, that an order directing an award to be filed is an order having the force of a decree and is in effect a decree (b) and that, consequently, the appeal memorandum ought to bear an *ad valorem* fee calculated on the amount decreed to be recoverable as provided by Art. 1, Sch. I of the Court-fees Act. **Harī Mohan Singh v. Kali Prasad Chaliha**, 33 C. 11.

GHOSE and GREDIT, JJ.

References.—(a) 29 C. 167, J. 5 A. 333, Decision of Oldfield, J. in 5 A. 333, *approved* and 23 C. 723, D.

Ss. 6, 9, 10 and 28—See I, Civil Pro. Code, 66 (3) S. 7, cl. (4), Sch. II, Art. 17, cl. 1.

Per RUSSELL, AG. C. J.—A suit for a declaration with consequential relief falls under para 4 (c) of S. 7 of the Court Fees Act, and so it is a suit "other than" those referred to in paras 5, 6, 9 and 10 (d) of that section.

The words "as determinable" in S. 8 of the Suit Valuation Act, mean determinable by the Court, which has to try the case. **Dayaram Jagjivan v. Gordhandas Dayaram**, 8, Bom. L.R. 885.

RUSSELL, AG. C. J., & ANTON, J.

References.—2 A. 720, 13 C. 162, 15 B.L.R. App. 1, 4 B. 515, 29 B. 207, 8 C. 975, 29 B. 229, 17 C. 680, 683, 8 C. 75, 9 B. 20, 27 M. 480, & 8 B. 31, H.

(3-a) *S. 7, IV C—Suit by member of Malabar Tarwad to set aside karar entered into during his minority by adult members of the Tarwad—Nature of suit—Application of Rule No. 2 of High Court Rules (Madras).*

Where a member of the tarwad sues for a declaration that his right as a member is unaffected by a karar entered into during his minority by the adult members of the family including the karnavan, *held* that the right view in such instances is that the transaction would bind members, who are not actually consenting parties, only if the considerations if any, which pass, and the other attendant circumstances, constituted it a valid exercise of the power of the karnavan and the others, but, otherwise, it is altogether void. Though a transaction, which is void, may, under certain circumstances, be cancelled by a Court, at the instance of a person not party to it, on the ground that it would throw a cloud on his title, it is not true that such a person must get rid of the transaction

Court Fees Act (VII of 1870).—(Continued).

by having it actually cancelled, in order to rely on its invalidity as against him. In this view, the above suit is a suit for a mere declaration, and not one for declaratory decree with consequential relief falling within S. 7, IV C. Nor does Rule No. 2 of the High Court rules (dated 20th February, 1903) apply to such a case. That rule must be confined to cases of the precise description provided for by S. 7, IV C. *Viz.*, suits to obtain a declaratory decree or order where consequential relief is prayed. **Chingacham Yittil Bankaran Nair v. Chingacham Yittil Gopala Menon**, 1 M. L. T. 412.

SUBHAMANIAN AIYAR & MOORE, JJ.

S. 7 (4) (c) and Art. 17 and S. 7 (IV), cls. (c) & (d) —I, 357 & 358.

S. 7, cl. 5—See I, Civil Pro. Code, No. 27.

S. 7, cl. 5, proviso, 3—I, 358.

(4) Ss. 7 sub-ss. V and VI and 12—Court fee—Pre-emption—Valuation of suit—Appeal—Act No. X of 1897 (General Clauses Act), S. 3 (50).

Held, that the expression "the year next before the date of presenting the plaint" occurring in clause (c) of sub-section V of S. 7 of the Court Fees Act, 1870, denotes a period of 365 days reckoning backwards from the date of presentation of the plaint.

Held, also, that where a Court had based its decision as to the valuation of a suit upon a wrong construction of the expression "the year next before the date of presenting the plaint," an appeal was not precluded by S. 12 of the Court Fees Act, 1870. **Ghasi Ram v. Hargobind**, A.W.N. (1906), 66=8 A.L.J. 244=28 A. 411.

BURKITT, J.

(5) S. 7, sub-section V, cl. (b)—Pre-emption—Definite share in a Bhaiyachara village—Court-fee—Plaint filed intentionally in wrong Court—Return of plaint.

In a *bhaiyachara* village certain plots of land amounting to half of a *khata* paying revenue to Government were sold. The plaintiff sued to per-empt.

Held, that the property sold was a definite share in the estate paying revenue to Government and the Court-fee was payable under cl. (b) of sub-section V, of S. 7 of the Act.

Held, further, that if a plaint is filed intentionally in a wrong Court to give it jurisdic-

Court Fees Act (VII of 1870).—(Continued).

tion, the Court should return it to be presented to the proper Court and should not dismiss the suit (a) **Esharia v. Gopal**, 3 A.L.J. 511=A.W. N. (1906), 195.

BANKER, J.

Reference.—(a) 18 A. 226, F.

(6) Ss. 7 (V) (f), 11—Suit for settlement of accounts, valuation of—Arbitrary value fixed by plaintiff—Finding of Court as to amount actually due exceeding its pecuniary jurisdiction, effect of—Suits Valuation Act, 1887, S. 8.

In a suit for settlement of accounts, where the actual amount due to the plaintiff is, at the inception of the proceedings, unknown to him and can be ascertained definitely only after enquiry, the plaintiff is allowed by law to place an arbitrary value on the relief sought by him and pray for a decree for such sum as might be found due to him from the defendant. This valuation is, however, merely tentative, and the actual value of the suit is the amount, which the Court subsequently finds to be due to plaintiff, and if, in any such case, such actual value is found to exceed the pecuniary limit of the Court's jurisdiction, the Court is not competent to pass a decree in the case but should return the plaint for presentation to a Court having jurisdiction. **Manna Lal v. Samandu**, 46 P. R. 1906=94 P.L.R. 1906.

JOHNSTONE and RATTIGAN, JJ.

References.—100 P.R. 1888, 58 P.R. 1902, and 81 C. 865, Appr., 21 C. 550, Diss.

(7) S. 7 (VI)—See No. 4, supra.

(8) S. 7, cl. (9)—Redemption, suit for—Court fee on memorandum of appeal, how computed.

In a suit for redemption when the mortgagor or the mortgagee appeals, not raising the question of the right to redeem, but challenging the amount held by the Court below to be payable by the mortgagor, the Court-fee should be computed *ad valorem* on the difference between the amount found to be payable by the Court below and the amount which the appellant contends should be paid. **Ram Adhin v. Hanuman**, 9 O. C. 153.

CHAMBER and WELLS, J. C.

Reference.—2 O.C. 87, F., 6 A. 488, B.C.A. No. 189 of 1906, A.W.N. (1906), 40, 13 A. 34, R.

Court Fees Act (VII of 1870).—(Continued).

- (9) S. 7, cl. (9), mortgage suits falling under, fees payable on appeals from, to be computed on subject-matter in dispute in appeal—Art. I of Sch. 1.

The natural construction of the words "subject-matter in dispute," as used in Art. 1 of Sch. I of the Act, would require there being interpreted, when a memorandum of appeal is concerned, as applying to the matter in dispute in the appeal. From the provisions in S. 16 of the Act, it is quite clear that the intention and policy of the legislature has been to take up, as the basis and criterion for the purpose of computing the Court fees chargeable on appeal, not the amount or value of the subject-matter originally in dispute in the suit, but that of the subject-matter actually in dispute on appeal (a).

The provisions as to suits, by or against a mortgagee, in S. 7, cl (9) of the Act are intended to apply only to suits, in the first instance, and not to the cases of appeals therefrom, which latter (unless otherwise provided for) are chargeable, for Court fees, on the subject-matter actually in dispute therein, as provided for in the said Art. 1, Sch. I of the Act. *Reference under Court Fees Act, 1870, 29 M. 807=16 M. L.J. 287.*

WHITE, C.J., and SUBRAHMANYA AYYAR, J.

References.—(a) 27 A. 447, F.; and 10 B. 41, Diss. 13 A. 94 and 14 M. 480, R.

S. 7—cl. 9—See I, 358.

S. 9—I, Civil. Pro. Code, No. 66.

S. 10—See I, 359, 360.

(10) Ss. 10 and 12—Court-fee—Procedure—Second Appeal—Appeal to lower appellate Court by respondent in a High Court insufficiently Stamped.

Where it was discovered in Second Appeal in the High Court that the respondents, when appellants in the lower appellate Court, had not paid a sufficient Court-fee on their memorandum of appeal in that Court, and, up to the date of the hearing of the plaintiff's appeal in the High Court, though called upon to do so, had not made good the deficiency, it was held, that the proper procedure was not to dismiss the respondents' appeal to the lower appellate Court, but to stay the making of the decree, if any, of the High Court in favour of the respondents until such time as the additional Court fee due by them might be paid. *Mohan Lal v. Nand Kishore,*

Court Fees Act (VII of 1870).—(Continued).

A. W. N. (1905), 280=2 A. L. J. 683 (F. B.)=26 A. 270.

STANLEY, C. J., and BURNETT and RICHARDS, JJ.

References.—20 A. 362, F., 20 A. 277, overruled.

(11) S. 11, applicability of, to application for ascertainment of past and future mesne profits—Award of interest and of mesne profits, distinction between—Civ. Pro. Code, Ss. 209, 211, 212.

In this case, the decree holder appellant, having obtained decrees for the mesne profits accruing due both previous to the institution of the suit and after that date up to the date of recovery of possession, applied for the ascertainment of these mesne profits. They were so ascertained, and exceeded the amounts, on which Court-fees had already been paid. The Court ordered the deficit Court-fees to be paid within a fixed time; but they were not so paid. *Held*, that, under the above circumstances, the application was rightly dismissed by the Court (a) since in such cases where the suit had been instituted for the past as well as the future mesne profits and an amount was claimed and fees paid in respect of the former, the provisions of S. 11 of the Court-Fees Act have been held to be applicable (b).

Held, further, there is no analogy between interest awarded under S. 209 of the Code of Civil Procedure and mesne profits claimed and awarded under Ss. 211 and 212, such interest forming no part of the claim or the relief granted, as in the case of mesne profits. *Dwarka Nath Biswas v. Debendra Nath Tagore*, 33 C. 1282.

RAMPINI AND HARRINGTON, JJ.

References.—(a) 24 C. 178, F. (b) 2 A. 682 & 15 B. 416, F.

(11-a) S. 11—See No. 6, *supra*.

(11-b) S. 12—See Nos. 4 & 10, *supra*.

(12) Refund under S. 13 of the—of the Court-fee paid on an appeal from an order rejecting a plaint under S. 113, C.P.C.—See Civ. Pro. Code No. 87, 16 M.L.J. 30.

(13) Ss. 17, Application of, to cases where reliefs claimed are cumulative—"Two or more distinct subjects," meaning of.

There is nothing in the language of S. 17, to warrant the operation of the section being confined to cases in which the reliefs are cumulative (a).

Court Fees Act (VII of 1870).—(Continued).

The phrase "two are more distinct subjects" in S. 17 may not admit of precise definition applicable to all cases, and it may be that, where reliefs are claimed in the alternative, with reference to the same causes of action, S. 17, would not govern the case. That may also be so, when the relief claimed is one and the same, though the claim is sought to be made out on distinct or alternative grounds. But, where a claim for redemption is based upon the alleged right of the plaintiff as mortgagor, while the alternative relief is based on a contract for a further mortgage, which is distinct from the earlier mortgage right, though both are evidenced by the same instrument, the alternative claims are distinct matters, which could have been made the grounds of separate suits, and it would, therefore, seem to be reasonable to hold that they are "distinct subjects," within the meaning of S. 17, for purposes of Court-fees and jurisdiction.

Where, therefore, a claim is in the alternative, first, for redemption of a mortgage, the principal amount secured whereby is Rs. 3,000, and in the event of that failing, secondly, to recover, from the defendants, sums aggregating more than Rs. 2,000, on the footing of a mortgage to be executed by the plaintiff (mortgagor) to the defendants, in accordance with certain provisions contained in the earlier mortgage, the suit embraces two distinct subjects and the value of the suit, for purposes of Court fees, is more than Rs. 5,000 and, consequently, the High Court, and not the District Court, has the jurisdiction to hear the appeal from the Subordinate Judge in this case. **Murthi Khundan v. Anantanarayana Pattar**, 16 M.L.J. 462=1 M.L.T. 426.

SUBRAHMANYA AIYAR & BENSON, JJ.

References.—(a) 6 B. 302 & 15 B. 82, R.
See I, 361.

S. 19 D—See I, 361.

S. 26—See „ „

(14) S. 28—*Civil Procedure Code, S. 54—Suit filed on last day of limitation on an insufficient Court fee—Limitation.*

Where, by a mistake of the plaintiff, and not of the Court or of any officer of the Court, a suit was filed upon an insufficient Court fee and this was not discovered until after the period of limitation for the suit had expired, it was held that the suit was barred (a). **Ram Lalal**

Court Fees Act (VII of 1870).—(Concluded).

Singh v. Dubri Rai, A.W.N. (1906), 21=28 A. 310=3 A. L. J. 888.

STANLEY, C.J. and BURKITT, J.

References.—(a) 12 A. 57; 23 A. 428; 12 A. 129 and A.W.N. (1904), 188, F. 24 M. 331, Diss.

See, also, I, 362.

(15) Sch. I, Art. 1.—*Portion of mortgaged land, declared not liable for mortgage debt—Appeal against this mortgage decree—Mortgage debt greater than the value of exonerated property—Value of appeal.*

Where the question raised in an appeal is not a question of amount, but is a question as to the liability of certain lands, exonerated from liability by the lower Court, to be proceeded against for a mortgage debt due to the plaintiff, the market-value of the exonerated property, if it is less than the mortgage debt, must be taken to be the value on the subject-matter in dispute in the appeal for purposes of Court-fees. Such a case is governed, not by S. 7, but by Art. 1 of Sch. I of the Act. **Kesavar Appu Ramakrishna Reddi v. Kotta Kota Reddi**, 1 M. L. T. 311 (F. B.)=16 M.L.J. 458.

WHITE, C. J., BENSON AND WALLIS, JJ.

References.—4 M. 339, F., 10 M. 187, Appr., 13 M 508, R., and 16 M. 326, Dissd.

(16) Art. 1—See No. 2, *supra*.

(17) Art. 11, Sch. II—See No. 2, *supra*.

(17-a) Art. 17 (1), Sch. II—See No. 3, *supra*.

(18) Art. 17, vi, Sch. II—*Court fee—Suit to recover possession of a share in immovable property after partition.*

Where, on the face of the plaint, it appeared that the suit was in fact a suit to establish the plaintiff's title to a one-third share in certain property and to recover possession of the same, a claim for partition being added to make the relief sought effectual, it was held that an *ad valorem* fee was payable on the plaint and not a fee of Rs. 10 as provided by Art. 17, cl. vi of the second schedule to the Act. **Wali-ullah v. Durga Prasad**, A.W.N. (1906), 38=3 A.L.J. 181=28 A. 340.

BAKERJI and RICHARDS, JJ.

References.—18 B. 209 and 8 C. 757, Refd. to.

Court of Wards.

Appointment as administrator of a nominee of the—See ACT V OF 1881 (PROBATE), No. 6, 10 C.W.N. 241.

See, also, I, 363 and Act IX of 1879 (Court of Wards, Bengal), No 1.

Court of Wards Act (Bengal).

See under ACT IX OF 1879 (BENGAL).

See under ACT VIII OF 1890 (BENGAL).

Covenant.

(1) A collateral—by means of distinct letter not to sue upon a pro-note for a specified time is no bar to a suit thereon within such time—See PROMISSORY NOTE, No. 1, 16 M.L.J. 108.

(2)—under a counterpart executed by a vendee to one of his vendors providing for resale of the property to him—Whether the transaction amounts to a sale or mortgage—See VENDOR and PURCHASER, No. 2, 16 M.L.J. 106.

Crops.

—delivered along with land delivered under decree for redemption—See CIV. PRO. CODE, No. 144, 9 L. B. R. 129.

See I, Limitation Act, No. 43.

Crown.

(1) Prerogative of the—in insisting on its costs in a suit *in forma pauperis* being paid in preference to other creditors—See CIV. PRO. CODE, No. 232, 10 C. W. N. 857.

(2) Power of the—to dismiss its servants at will—See SECRETARY OF STATE, No. 1, 33 C. 669.

Crown debt.

—See under CROWN.

Crown Grants Act.

—See ACT XV OF 1895 (CROWN GRANTS), No. 1, 8 A.L.J. 628.

Crown Lands.

See I, Landlord and Tenant, No. 19.

Curators Act.

See ACT XIX OF 1841.

Custom.

(1) *Pre-emption*—'Taraf Ravi' sub-division of Multan City—Punjab Laws Act, 1872, S. 11.

The two questions for decision in this case were (1) whether a certain locality known as 'Taraf Ravi', outside the City of Multan, can be considered to be a sub-division of Multan

Custom.—(Continued).

City within the meaning of 'sub-division' in S. 11 of the Punjab Laws Act, 1872 and (2) whether the custom of pre-emption prevailed therein. Found, on a consideration of the evidence in this case, (1) that the locality known as 'Taraf Ravi,' a suburb of Multan City, within the municipal limits of that City, was a 'sub-division' thereof for purposes of S. 11 of the Punjab Laws Act, 1872 and (2) that the custom of pre-emption did prevail therein. *Adulla v. Pannu Ram*, 42 P.R. 1906.

ROBERTSON and CHITTY, JJ.

References.—83 P.R. 1889, 165 P.R. 1888, 86 P.R. 1901, 170 P.R. 1889, 70 P.R. 1898, 87 P.R. 1890, R.

(2) *Declaratory decree obtained by reversioner entitling alienor's heirs to the property after his life—Suit by an after-born son of alienor to recover property—Right of such son to take advantage of the prior decree.*

The land in suit was sold by one G to the father of defendants (1) and (2). Two of the collaterals of G brought a suit against G and the vendors and obtained a declaratory decree to the effect that, after G's death, his heirs would be bound by the alienation only to the extent of a certain charge on the land and would be entitled to get back the property on payment of the amount of such charge. Held, that such a decree obtained by the reversioner against the alienor and alienee enures for the benefit of whoever may be the person entitled to succeed when the inheritance falls in, provided always that such heir is himself a descendant of the common ancestor of himself and the alienor who alienated the land.

The right to inherit land and the right to protect that land from improper alienation do not stand on the same footing under customary law. The former is derived through the immediately preceding ancestor, but the latter is a right which accrues to every descendant of the original holder of the land (a). So, where, as in the present case, some of those descendants have successfully sued to protect the estate and obtained a declaratory decree, the person entitled to succeed when the inheritance falls in, whether he be an after-born son or another, is entitled to the benefit of the results of such a suit in the absence of any special causes debarring him from such a right. *Muhammad Din v. Fattah Muhammad*, 24 P.R. 1906 = 96 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

Custom.—(Continued).

Reference.—(a) 84 P.R. 1898, 7.

(8) *Adoption by Jats with ceremonies—Adopted son's right to succeed to the property of his adoptive father's father when the adoptive father dies in the life-time of his father.*

In the case of a formal adoption with customary ceremonies, the adopted son is entitled, even among Jats, to succeed to the property of his adoptive father's father, though his adoptive father died in the life-time of his father and did not inherit property from him.

Quære.—Whether an appointed heir is so entitled? *Bhagwan Singh v. Gardial Singh*, 80 P.L.R. 1906.

CHATTERJI and JOHNSTONE, JJ.

(4) *Hindu Law—Marriage—Marriage of a Bedi Khatri with a Brahmini—Will.*

A *Bedi Khatri* married a Brahmini and, before his death, made a will in respect of his property in favour of the son born of the union.

Held, that the parties not being shown to have been agriculturists, the will was not open to any objection on the part of the testator's brother and nephews, who contended that the will was inoperative, and the testator's son being illegitimate, had no right to succeed to the property of the testator. *Pramda v. Sant Ram*, 77 P. L. R. 1906.

CHATTERJI and JOHNSTONE, JJ.

(5) *Custom of Motap—Res Judicata—Civ. Pro. Code, S. 17—Competency of the Court in which the suit was instituted.*

The custom of Motap exists among the *Chudasama* Garsias of the village of Kharad in the Dhandhuka Taluqa.

In considering the competency of a Court for purpose of deciding on a question of *res judicata*, one must look to the powers of the Court in which the suit was instituted and not to the powers of the Court by which that suit was decided on appeal (a). *Malubhai Ladhakhal v. Surangji Jalamsangji*, 7 Bom. L. R. 321 = 30 B. 290.

JENKINS, C.J. and ASTON, J.

References.—(a) 5 C. 832, F. 28 C. 415, R.

(6) *Right to pre-emption based on—Burden of proof as to discontinuance of—See PRE-EMPTION, No. 19, A.W.N. (1906), 174.*

(7) *Family—of inheritance—Entries in Wajib-al-ars as evidence of—See HINDU LAW (ADOPTION), No. 3, 3 A.L.J. 415.*

Custom.—(Continued).

(8)—of *Dhar Dhar*, suit by *Talagdar* for possession of land by—See ACT I OF 1899 (OUDH ESTATES), No. 1, P.O.C. 129.

(9) *Question of existence or non-existence of—point of law for purposes of a second appeal—See CIV. PRO. CODE, No. 309, 3 A.L.J. 457.*

(10)—of pre-emption as recorded in the *Wajib-al-ars* of 1894 not a—under the Mahomedan Law—See PRE-EMPTION, No. 19, 3 A.L.J. 457.

(11)—of succession at variance with the *lex loci*—Burden of proof—See HINDU LAW (MARRIAGE), No. 1, 3 A.L.J. 399.

(12) *Evidence as to—competency of High Court, in second appeal, to examine—See CIV. PRO. CODE, No. 312, 29 M. 24=16 M.L.J. 6.*

(13) *Alienation of ancestral property by Jat proprietor—a suit by after-born son to contest alienation—limitation—See LIMITATION ACT (XV OF 1877), No. 86, 76 P.R. 1906.*

(14) *Pre-emption, existence of presumption as to—Chak No. 296, Mauza Montgomerypur, Jhang District—See ACT IV OF 1879 (PUNJAB LAWS), No. 3, 110 P.L.R. 1906.*

(15) *No allegation as to nature of—in plaint—Wajib-al-ars silent as to nature of—Applicability of Mahomedan Law—See PRE-EMPTION, No. 5, 2 A.L.J. 492=A.W.N. (1906), 190.*

(16) *Adoption of grandson of father's sister among Purbia Kurmis, validity of—See HINDU LAW (ADOPTION), No. 2, A.W.N. (1906), 235.*

See, I, 367—371 and Civil Pro. Code, No. 296; Hindu Law (Adoption), No. 10; Hindu Law (Impartible Estates), No. 1; Hindu Law (Inheritance), Nos. 1, 4 and 10; Pre-emption, Nos. 24 & 49; Khorposh Grant, No. 1; Mines, No. 2.

Custom of Trade.

(1) *Pakki adat—Incidents of the system.*

The evidence adduced in this case establishes that the following incidents attach to the *pakki adat* system—

(1) The *pakka adatia* has no authority to pledge the credit of the up-country constituent to the Bombay merchant, and no contractual privity is established between the up-country constituent and the Bombay merchant.

(2) The up-country constituent has no indefeasible right to the contract (if any) made by the *pakka adatia* on receipt of the order, but the *pakka adatia* may enter into open contracts with the Bombay merchant either on his own

Customs of Trade.—(Continued).

account, or on account of another constituent and thereby cancel the same.

(3) The *pakka adatia* is under no obligation to substitute a fresh contract to meet the order of his first constituent.

(4) The contract of the *pakka adatia*, in circumstances like those appearing in the case, is one whereby he undertakes or guarantees, that delivery should, on due date, be given or taken at the price at which the order was accepted, or difference paid; in effect, he undertakes or guarantees to find goods for cash or cash for goods or to pay the differences. *Bhagwandas Narotamdas v. Kamji Dooli*, 7 Bom. L.R. 611 = 30 B. 305.

JACKINS, C.J. and BATTY, J.

References.—29 B. 291 = 7 Bom. L.R. 165, *Refd. to*.

I, 373—374.

Customs (peculiar to Punjab).

(1) *Custom—Adoption—Evidence of—Relinquishment of status by adopted son not allowed.*

An adopted son cannot relinquish his status. The mere fact that the person, whose adoption is contested, is described as the son of his real father in deeds executed subsequently to the document appointing him as heir executed and registered by the adoptive father, is not sufficient to regard with suspicion the oral evidence adduced in support of the registered document. *Narain Das v. Munai and Shaman*, 1 P.L.R. 1906.

CHATTERJI, J.

(2) *Adopted son's right to succeed collaterally in adoptive father's family—Chima Jata of the Daska Tahsil, Sialkot Dt.*

The question, in this case, was whether there was a custom, among the *Chima Jata* of the Daska Tahsil of the Sialkot District, recognising the right of an adopted son to succeed to the property of his adoptive father's collaterals. The *Riswah-tam* of the Sialkot District was distinctly in favour of the contention and there was evidence to the effect that, on various occasions, the rule laid down in it was observed in practice. *Held*, the adopted son was entitled to succeed to the estate of his adoptive father's collaterals. *Makhan Singh v. Dule*, 4 P.R. 1906 = 55 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

Customs (peculiar to Punjab).—(Continued).

(3) *Alienation—Bawarias of Tahsil Muktasar, Ferozepore District.*

Held, that it was not proved that the *Bawarias* of Tahsil Muktasar, Ferozepore District, were an agricultural tribe or that they had adopted the customs of the agricultural tribes. *Wazira and Sukha v. Ram Singh*, 14 P. L. R. 1906 = 86 P. R. 1906.

ROBERTSON and RATTIGAN, JJ.

(4) *Alienation by childless male proprietor—Suit by father of reversioner to have the alienation declared null and void—Dismissal of suit on merits—Subsequent suit by reversioner for possession of alienated property after death of alienor—Estoppel.*

Held, that under the Customary Law, a suit by a reversioner for possession of property alienated by a sonless proprietor is barred by the dismissal on the merits, of a suit previously filed by his father for a declaration that the alienation did not affect the father's reversionary interests (a). *Indar v. Choki Ram*, 2 P.L.R. 1906.

REID, J.

References.—(a) 18 P.R. 1895; 84 P.R. 1896 (F.B.); 58 P.R. 1905 = 50 P.L.R. 1905; 2 P.R. 1892 (F.B.); 15 P.R. 1903 = 55 P.L.R. 1905, *Refd. to*, 10 C. 324 (P.G.); 32 A. 38 (F.B.) and 24 A. 94 (P.G.), *Instd.*

(5) *Alienation by father—Sale—Consideration mainly consisting of just antecedent debts.*

Where the plaintiff sued for possession of the property in suit, and contended that the sale of the same by his deceased father to the defendant, in consideration of Rs. 1,250 was invalid, and it was found that there were just antecedent debts amounting to Rs. 1,112 due by the deceased father of the plaintiff—

Held, that the suits must be dismissed, the mere fact that the plaintiff's father secured Rs. 188 more from the vendee was no reason for holding that the sale was not for necessity. *Ghulam Muhammad v. Allah Dad*, 5 P.L.R. 1906.

JOHNSTONE and LAL CHAND, JJ.

(6) *Alienation of land—Koreshin of Mauga Kareli, Pind Dadan Khan Tahsil, Jhelum District, whether governed by customary law of agricultural tribes or by their personal law, Mahomedan law.*

Customs (peculiar to Punjab).—(Continued).

The question for decision was whether the family of the defendants, who were *Korshis* of *Manza Kareli*, Pind Dadan Khan Tahsil, Jhelum District, were governed by the customary law as observed among the agricultural tribes of the Punjab or by their personal law, *viz.*, the Mahomedan law, in a matter relating to alienation of ancestral property. The principal evidence regarding the observance of the custom consisted of (1) the *Wajib-al-azz* of the village, declaring that in certain matters relating to inheritance, the *Korshis* were observing certain rules incompatible with the rules of the Mahomedan law of inheritance; (2) that, in the Government Notification under Act XIII of 1900 (Punjab Land Alienation), the *Korshis* of the District in question were mentioned as members of an agricultural tribe. *Held*, on the evidence, that it had not been established that the *Korshis* observed the custom of agriculturists, in all matters, much less in the particular matter in question, that the presumption that they were governed by their personal law was not rebutted and that, therefore, the customary law of agricultural tribes was not applicable to the defendant's family.

With regard to the Notification of the Government it was *held* that the inclusion of the *Korshis* in the agricultural tribe mentioned therein was not conclusive proof of the fact that the *Korshis* of the District have adopted the general rules of customary law observed by the agricultural tribes of the District. **Jawahir Singh v. Yaqub Shah**, 5 P.R. 1906.

ROBERTSON, and RATTIGAN, JJ.

(7) — *Endowment—Removal of Mahant—Grounds of removal.*

Before a *Mahant* of a shrine can be removed, the misconduct or mismanagement relied on by the plaintiff must be clearly proved and must be of so serious a nature as to render the retention of the *Mahant* undesirable and detrimental in the interests of the shrine and its worshippers (a). **Ram Kishan v. Chet Singh**, 13 P. L. R. 1906.

KENSINGTON and CHITTY, JJ.

Reference.—(a) 122 P. R. 1890; 4 P. R. 1899. 89 P. R. 1901 and C. A. 359 of 1901, *Refd. to*.

(8) *Gift by male proprietor to daughter's son, who had rendered service in presence of son—Suit by nephews (brother's sons) contesting gift—Awans of Talagang Tahsil, Jhelum District.*

Customs (peculiar to Punjab).—(Continued).

A male proprietor, an *Awan* of Talagang Tahsil, Jhelum Dt., made a gift of certain property to his daughter's son, who had rendered him services. The donor had a son living, who did not object to the gift. The nephews of the donor sued for a declaration that the gift to the daughter's son did not affect their reversionary rights. *Held*, that custom, among *Awans* of the Jhelum District, fully recognises the power of a male proprietor to make a gift to a daughter's son, who has rendered him service, even in the presence of the son, and that collaterals have no right to question the gift so made. The question, whether the plaintiffs were precluded from coming into Court by reason of the presence of the son of the donor and his not contesting the gift, was not decided in the case.

Khuda Yar v. Fattah, 8 P.R. 1906 = 66 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

References.—46 P.R. 1900; 79 P.R. 1896; 53 P.R. 1899; 49 P.R. 1898; 9 P.R. 1899, *cited* and *F.* 52 P.R. 1902; 89 P.R. 1887; 122 P.R. 1892; 22 P.R. 1899; 15 P.R. 1895; 26 P.R. 1901; 108 P.R. 1898, 81 P.R. 1894 and 59 P.R. 1884; *It.*

(9) *Pre-emption—Kangra District—Government letter No. 323 dated 22nd April, 1862.*

In the absence of proof of special custom, right of pre-emption must be allowed in favour of persons enumerated in S. 12 of the Punjab Laws Act, as regards villages in the Kangra District. The directions contained in Government letter No. 323, dated 22nd April, 1862, cannot be held to prevail over statute law. **Kripa Ram v. Gulab Din**, 7 P. L. R. 1906.

CHATTERJI, J.

(10) *Religious endowment—Succession—Escheat—Right of superior gaddi—*

Where it was proved that the land in suit had descended, for at least five generations, from *guru* to *chela*—

Held, that it must be regarded as endowed property and not the private property of the last holder of it.

Held, also, that the rule of succession from *guru* to *chela* could not be altered to make the land descendible to the heirs of the last holder of it by his entering married life against the custom of the order.

Held, further, that it was proved that, in the absence of any *chela* of the last holder, the

Customs (peculiar to Punjab).—(Continued).

land reverted to the *mahant* of the superior *gaddi* to which the institution concerned was subordinate. **Musammam Har Devi v. Charn Das**, 12 P.L.R. 1906.

CHATTERJI and KENNINGTON, JJ.

- (11) *Muhammadian Law—Family custom—Succession—Right of representation—Sufi Sayads of Ludhiana City—Adverse possession—Permissive possession—Absentee—Possession on behalf of wife.*

The parties to the suit were *Sufi Sayads* of Ludhiana City. The plaintiff, uncle of the defendant, sued for declaration of his right to the property belonging to his father and grandfather of the defendant, on the ground that the defendant's father having predeceased his father, according to Muhammadan Law, the plaintiff excluded the defendant.

The plaintiff sued also for declaration of right to land belonging to his maternal uncle which he alleged was in the possession and management of his father by reason of the latter having married plaintiff's mother.

Held, (1) that it was proved that the family of the parties had long since lost sight of the elaborate rules of inheritance prescribed by Muhammadan Law under which a son-excludes from inheritance the sons of another son, who has predeceased their father and (2) that, in the absence of gift or acquisition of title by adverse possession, the possession by plaintiff's father of the land belonging to plaintiff's maternal uncle must be held to have been on behalf of plaintiff's mother, and the plaintiff was entitled to the declarations sought for. **Sayad Ata Muhammad v. Nur-ul-Hassan**, 25 P.L.R. 1906.

JOHNSTONE and LAL CHAND, JJ.

- (12) *Succession—Whole-blood—Half-blood—Pagwand—Chundawand—Presumption.*

Held, that, in this case, though property was distributed in the family according to the rule of *Pagwand* and the presumption was that the whole-blood among the collaterals did not exclude the half-blood, yet the evidence produced by the defendants rebutted the presumption (a). **Jafar Khan v. Muhammad Khan**, 29 P.L.R. 1906.

JOHNSTONE, J.

References.—(a) 4 P.R. 1801 (F.B.), 34 P.R. 1900=P.L.R. (1900), p. 447, 31 P.R. 1903, *Refd. to.*

Customs (peculiar to Punjab).—(Continued).

- (13) *Alienation by a Khatri male proprietor—Right of reversioners to question alienation—Khatris of Hasil Tahsil, Chakwal, Jhelum District—Burden of proof.*

The parties to the suit were *khatris* of the village of Hasil, Tahsil Chakwal, Jhelum District. The suit was for a declaration by reversioners to the estate of a *khatri*, a sonless male proprietor in possession of a divided estate that an alienation thereof was not binding on the plaintiff, a reversioner. *Held*, that no custom, controlling the power of alienation of a male proprietor like the one in question, was established. *Held*, also, that the burden of proving that *khatris*, who, generally, do not depend on land, are governed by the customary law of the Punjab in matters of alienation of land, lies on parties asserting the existence of such a custom (a).

The mere fact that a *khatri* held land for a long time is not by itself sufficient to shift the onus to the other side (b). **Atar Singh v. Prem Singh**, 12 P. R. 1906 = 108 P. L. R. 1906.

JOHNSTONE, J.

References.—(a) 103 P. R. 1894, 94 P. R. 1898, 107 P. R. 1901, 71 P. R. 1904, *cited* and *F.* (b) 50 P. R. 1893 (F.B.), *Refd. to.*

- (14) *Alienation—Gift by sonless proprietor of ancestral estate to daughter in the presence of brother—Sohani Pathans of Tahsil Shakargarh, Gurdaspur District.*

The parties to the suit were *Sohani Pathans* of Tahsil Shakargarh in the Gurdaspur District. Plaintiff, a brother of one K, a sonless male proprietor, sued to set aside a gift by the latter of one-third of his ancestral estate to his daughter on the ground that, under the customary law, K had no right to make the gift. *Held*, on the evidence, that a sonless proprietor in the District in question has the power to make a gift like the one in question. The *Ritaj-i-am* of Shakargarh was clear and there were many instances of such gifts. **Amir Khan v. Rurl**, 14 P.R. 1906.

ROBERTSON and RATTIGAN, JJ.

- (15) *Inheritance—Right of widow to succeed to husband's collateral—Johal Jats of the Jagraon Tahsil, Ludhiana District—*

Held, on the evidence, that, among Johal Jats of Jagraon Tahsil of the "Ludhiana District," the widow of a sonless proprietor can succeed on a widow's tenure, to the property of

Customs (peculiar to Punjab).—(Continued).

her deceased husband's brother to which her husband could, if he had been alive when the succession opened, have succeeded. *Saddam v. Khemi*, 15 P.R. 1906=117 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

References.—90 P.R. 1893, 56 P.R. 1891, 183 P.R. 1898, 146 P.R. 1889, 43 P.R. 1905, 111 P.R. 1891 and 177 P.R. 1889, *cited and discussed*; 77 P.R. 1896, 112 P.R. 1903 and 69 P.R. 1896, *Refd. to*.

(16) *Sayads of Mauza Khanpur, Hoshiarpur District—Creation of occupancy rights—Effect of omission of a tribe in Notification under the Punjab Alienation of Land Act.*

I, a Sayad of Mauza Khanpur, Hoshiarpur District, created occupancy rights in favour of defendants, 1 and 2 and mortgaged the proprietary right in the same law to the same debts. Plaintiffs, the sons of I, sued for a declaration that, after their father's death, could not bind their rights. It was contended for the plaintiffs that it was not competent for I to create occupancy rights so as to prejudice their rights. The defence contended that the Sayads of Khanpur were, in matter of alienation governed not by the customary law applicable to agriculturists but by Mahomedan Law that even if customary law were applicable, the creation of occupancy rights was not tantamount to an alienation which could be objected to by collaterals or heirs of the creator thereof and then the transactions were for valid necessity. It appeared that the tribe to which I belonged had not been notified as an agricultural tribe for the purposes of the Punjab Alienation of Land Act. *Held*, that the tribe to which I belonged and which was found to have followed agriculture as land holding occupation for generations, were governed by the general rules of agricultural custom and not by the Mahomedan Law (a) also, that the fact of the non-mention of the tribe in the notification was not conclusive proof of the fact that it was not governed by the restrictions imposed on agricultural tribes of the Province, further, that, generally, it was open to a landowner to create occupancy rights in his ancestral holding that it is not open to his heirs to challenge his act unless the creation of such occupancy was a sale of the land itself or of proprietary rights therein held (b). *Faqir Muhammad v. Fazal Muhammad*, 10 P.R. 1905=66 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

Customs (peculiar to Punjab).—(Continued).

References.—(a) 44 P.R. 1898, 4 P.R. 1898, 69 P.R. 1898, 25 P.R. 1890, *Refd. to and Distd.* (b) 100 P.R. 1896, 80 P.R. 1896, 71 P.R. 1898, *cited and F. 11, P.R. 1904, Refd. to*.

(17) *Gift by a sonless Gujar to his daughter's sons without consent of male relatives, validity of—Gujars of Mauza Bholiwal Quadim, Ludhiana District.*

There was a suit by the reversioners to the estate of a sonless Gujar of Mauza Bholiwal Quadim, Ludhiana District, calling in question a gift by the latter, of his ancestral estate, to the sons of two of his deceased daughter's sons, on the ground that the alienation was without the consent of the reversioners. It was in evidence that the two daughters of the donor were married to the same man, that their *dolls* never left their father's house and that their husband was a *kanadamad*. *Held*, that the gift was valid without the consent of the male collaterals of the donor. *Nizam v. Gadhara*, 17 P.R. 1906=116 P.L.R. 1906.

JOHNSTONE and LAL CHAND, JJ.

(18) *Sayads of Mauza Shahabad, Karnal District—Right of daughter to succeed to an absolute estate in her father's property with absolute powers of alienation—Burden of proof—*

The parties to the suit were Sayads of Mauza, Shahabad, Karnal District. The questions for decision were, whether, under the customary law applicable to the parties, a daughter, in the absence of male descendants of a deceased male proprietor, can succeed to the estate of the latter, absolutely, with powers of alienation and on whom the burden of proof lies in such cases. *Held*, that the alienation under the particular custom being contrary to the general rules of inheritance applicable to females, the burden of proving the special custom lay on the party asserting it and that such a person not being established in the case, the daughter did not take an absolute alienable interest in her father's estate. *Abul Hussain v. Habib Ullah*, 18 P.R. 1906=114 P.L.R. 1906.

JOHNSTONE and LAL CHAND, JJ.

References.—25 P.R. 1890, D, 119 P.R. 1891, 74 P.R. 1902, *cited and F.*

(19) *Alienation by widow—Right of step-daughter to contest such alienation—Ghebrus Arains of Lahore District.*

Customs (peculiar to Punjab).—(Continued).

The parties to the suit were *Ghosha Arora* of the Lahore District and the question for decision was whether, by custom, a daughter is entitled to contest an alienation of her deceased father's estate made by her step-mother. *Held*, that the daughter is entitled to contest such an alienation. *Chiragh Bihri v. Hassan*, 19 P.R. 1906=70 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

(30) *Alienation—Will, by childless proprietor in favour of one of his several collaterals—Validity of will.*

Under the customary law, prevailing among the *Thirwars* of the Hoshiarpur District, it is a well known rule that a childless male owner can make a gift of his lands to one of his collaterals, in preference to his other collaterals, in consideration of services rendered to him by the donee. The gift, in the present case, made by will in favour of the defendant, is therefore, valid, plaintiffs not having shown that wills and gifts do not stand on the same footing. *Rajada v. Lehnu*, 96 P.R. 1906=52 P.L.R. 1906.

CHATTERJI and KENNINGTON, JJ.

References.—46 P.R. 1908 (F.B.) and 92 P.R. 1894, R.

(31) *Sister's son, right of, to inherit to childless male proprietor in Oshwarpur—Custom.*

The deceased owners of the land in dispute and the plaintiff were *Ghirths of Tika Bonehr* of the village of *Baldhar* in the Kangra District. Plaintiff's claim was dismissed by the lower Courts on the ground that, under customary law, sister's son is not recognised as an heir. *Held*, reversing their decision, that, as the custom obtaining is merely silent and not positively adverse to the plaintiff, as a sister's son, the alternative under S. 5 of the Punjab Laws Act, 1872, is to fall back on personal law and under the *Mitakshara* law, to which the parties were subject, the plaintiff was an heir, as a *bandhu*, there being no male collateral within the fourteenth degree. *Ballu v. Gur Dyal*, 95 P.R. 1905=47 P.L.R. 1906.

CHATTERJI and JENKSTONE, JJ.

References.—47 P.R. 1890 and 61 P.R. 1898, R.

(32) *Pre-emption—Houses—Vicnago—Pahari Dhiraj, suburb of Delhi City.*

Customs (peculiar of Punjab).—(Continued).

Held, that custom of pre-emption in respect to houses prevails in *Pahari Dhiraj*, suburb of *Delhi*. *Chhanga Mal v. Joti Parshad*, 75 P.L.R. 1906.

CLARK, C. J. and CHATTERJI, J.

(28) *Alienation—The Sikh Brahmins of Mauza Chadwala, Ambala District, sale of ancestral land by—Hindu Law, inapplicability of—*

The parties to this suit were *Sikhs of Mauza Chadwala*, tahsil *Jagadhri* in the *Ambala District*, who, though *Brahmins*, had for several generations abandoned the *Brahminical* thread, ceased to perform priestly functions and taken to agriculture in the main. *Held*, they were governed not by *Hindu Law* but by the agricultural custom, which obtained around them and it was, therefore, competent for the plaintiff to contest the alienation in question under the conditions obtaining under the ordinary Customary Law of the country side where the parties dwelt. *Gopal Singh v. Sukha Singh*, 58 P.R. 1906.

ROBERTSON and CHITTY, JJ.

(24) *Pre-emption, right of, based on vicnago—Mohalla Gidarpur, Multan City—S. 11, Punjab Laws Act, 1872.*

The house in question in this suit was situated in the *Gidarpur Mohalla*, which was not a separate sub-division, but merely a portion of "*Bairun Pak Darwaza*" which was the main sub-division, and formed a sub-division of the *Multan city* for the purposes of S. 11 of the Punjab Laws Act. *Held*, with reference to the judgments of the Chief Court in appeals Nos. 496 and 1027 of 1903 regarding the existence of the right of pre-emption in *Multan city*, that the custom of the pre-emption based on vicnago does obtain in the sub-division *Bairun Pak Darwaza* of *Multan* and in respect of the house in question. *Gulam Murtaza v. Rupe Mal*, 57 P.R. 1906=100 P.L.R. 1906.

ROBERTSON and CHITTY, JJ.

References.—88 P.R. 1888, 165 P.R. 1888 and 170 P.R. 1889, R.

(25) *Inheritance—Moghals of Pind Dadan Khan tahsil—Sons of an adopted son entitled to succeed collaterally in their natural family.*

Special custom might exist in certain localities prohibiting a son of an adopted son from succeeding in his natural family but the reason

Customs (peculiar to Punjab).—(Continued).

that would induce an adopted son to give up his rights in his natural family as against his own brothers would not apply, or at all events not with the same force, where it is a question of his succeeding collaterally, e.g., where he comes to have a claim against his natural uncle's estate as in the present case in which the parties were Moghals of Pind Dadan Khan tahsil. **Ghela v. Halder**, 59 P.R. 1906.

CLARK, C.J.

(26) *Muhammadian Kashmiris of Lahore city, matters of inheritance among, whether governed by Muhammadian Law or subject to Customary Law.*

The main issue in this case was whether the plaintiffs-appellants, who were Kashmiri Muhammadans, were governed in matters of inheritance by Muhammadan Law or by custom. They belonged to families engaged in trade or manufacture and resident in the city of Lahore. *Held*, the burden of establishing the existence of a custom modifying the rule of Muhammadan Law on the subject, was on the respondents, the question raised being whether females inherit, in accordance with Muhammadan Law, or are excluded by males in accordance with custom. The oral evidence for the respondents was, in many cases, that of men who had themselves profited by the exclusion of females and whose interests were obviously opposed to their admitting the rights of females. Further, the presumption in favour of custom is no greater among the Kashmiris than it is among the Muhammadan carpenters of Multan (a) or among Arain market-gardeners of Delhi city (b) and, in the absence of clear evidence to the contrary, the Kashmiri weavers and traders of Lahore city are to be held to be governed by Muhammadan Law and not by custom. **Maula Baksh v. Muhammad Baksh**, 54 P. R. 1906.

CLARK, C. J. and REID, J.

References.—(a) 47 P. R; 1900, *R* (b) 23 P. R. 1897, *R*.

(27) *Alienation of ancestral property—Lohar Tarkhans of Lorai ghat of Kunjah, Gujrat District—Competency of sons of alienor to contest the alienation.*

A Lohar Tarkhan of Lorai ghat of Kunjah in District of Gujrat alienated ancestral property. The sons of the alienor brought this suit contesting the alienation on the ground of absence of valid necessity for the alienation.

Customs (peculiar to Punjab).—(Continued).

The question was, whether it was competent for them to do so and whether they were governed by the general customs prevailing amongst agricultural tribes, limiting the alienation of ancestral agricultural property. *Held*, that the parties were governed and bound by custom, under which the alienors are subject to the usual restrictions in the matter of the alienation of ancestral immovable property and that the plaintiffs had a right to question the alienation on the ground of absence of necessity.

Kasim v. Hashem, 89 P.R. 1906=99 P.L.R. 1906.

JOHNSTONE and RATTIGAN, JJ.

(28) *Right of vicinage—Mohala Awan, Ludhiana.*

Suit for pre-emption of one-third share in a *haveli* in Mohalla Awan of Ludhiana city by a plaintiff, who owned the remaining two-thirds share. The question for decision was whether a custom of pre-emption by right of vicinage existed in the Mohalla. Found on a review of the evidence in the case that the existence of such a custom was amply proved by evidence, which was entirely unrebutted. **Dhan Debi v. Kanahi Ram**, 88 P.R. 1906=89 P.L.R. 1906.

LAL CHAND, J.

(29) *Pre-emption—Jagir villages, Goler jagir, Kangra district—Act IV of 1872 (Punjab Laws), S. 12.*

Suit for pre-emption of a certain land in the Goler Jagir, Kangra district. Plaintiff was a land-owner in the village. The vendee's contention, based on a letter of the Government of the Punjab, dated in 1862, was that the right was restricted to share-holders descended from a common ancestor, which the plaintiff was not. The letter was not embodied in any of the village administration-papers at the settlement of 1891. *Held*, that the letter of 1862 has no effect at all declaring the custom, except in so far as it has been accepted and embodied in the administration-papers of the various villages. The plaintiff had the presumption in accordance with the rules laid down under S. 12 of Act IV of 1872, in his favour. That presumption is not rebutted by the fact that entries have been made in the administration papers of 1862, such entries not being repeated at the Settlement of 1891. The defendants have thus failed to prove the existence of a custom different to that laid down under S. 12

Customs (peculiar to Punjab).—(Continued).

of Act IV of 1872. *Est. Ram v. Bahadur*, 87 P. R. 1906 = 105 P. L. R. 1906.

ROBERTSON and RATTIGAN, JJ.

(90) *Alienation by childless proprietor to agnatic relation in tenth degree—Competency of collateral of equal degree to contest the alienation.*

Suit to set aside an alienation by a childless male proprietor to an agnatic relation of his in the tenth degree. Plaintiffs were related to the vendor in the same degree as the vendee. The question was whether it was competent for them to challenge the alienation. *Held*, there is no definite rule that, up to a certain degree of propinquity alone, it is to be presumed that kinsmen have a right to impeach alienations of ancestral lands and that beyond that degree they have not (a).

In the absence of special facts, it cannot be laid down as a general principle of customary law or as a deduction from the decided cases that an alienation by a childless proprietor in favour of an agnate cannot be challenged by another agnate of equal or nearer degree. The only exception is where a gift is made to a collateral relation who has rendered service to the donor and there are strong equities in his favour (b). There being no allegation of any special connection between the vendor and the purchaser in the particular case, creating a sort 'of moral obligation on the part of the former' to make a gift in favour of the latter, plaintiffs were given a decree (c). *Khazan Singh v. Relu*, 35 P. R. 1906.

CHATTERJI and KENSINGTON, JJ.

References.—(a) 41 P. R. 1900, 100 P. R. 1898, 101 P. R. 1898, 75 P. R. 1898 and 42 P. R. 1902, R. (b) 92 P. R. 1904, F. (c) 116 P. R. 1894, R.

(81) *Muhammadian Law—Alienation by father—Koreshis of Jhelum district are not governed by general custom restraining alienation—Agricultural tribe—Inclusion of a tribe as agricultural in the Punjab Alienation of Act Land.*

The plaintiff, a *Koreshi* of *Mauza Kareli*, *Pind Dadan Khan* tahsil, *Jhelum* district sued to set aside an alienation of ancestral property by his father. It was pleaded that the father had absolute power to alienate and the suit did not lie.

Held, that as *Koreshis* of *Jhelum* district had not adopted all the customs of agricultural

Customs (peculiar to Punjab).—(Continued).

tribes and it was not shown that the plaintiffs had, under custom, a right to restrain his father from alienating ancestral property, the suit must be dismissed (a).

The inclusion of a tribe as an agricultural tribe in the Punjab Alienation of Land Act cannot be regarded as a conclusive proof that the members of the tribe have adopted the general rules of Customary Law observed by the agricultural tribes. *Jawahir Singh v. Yaqub Shah*, 59 P. L. R. 1906.

ROBERTSON and RATTIGAN, JJ.

References.—(a) 101 P. R. 1902 = 22 P. L. R. 1908, 175 P. R. 1888, 92 P. R. 1901 = 148 P. L. R. 1901, R.

(92) *Among Mahtons of tahsil Nawashahr, Jullunder District—Appointed heir pre-deceased adoptive father—sons of the former right of, to succeed to the latter's estate on his death.*

The question in this case was whether under the customary law prevailing among Mahtons of Nawashahr tahsil, in the Jullunder District, the sons of an appointed heir, who pre-deceased the man by whom he was so appointed, could succeed on the latter's death to his estate. *Held*, though between the formal or ceremonial adoption as known to Hindu Law and the appointment of an heir according to custom, very clear distinction obtains inasmuch as the former is based on the idea of spiritual, and the latter of temporal, benefit, little heed being given to the observance of ceremonies (a), yet, where the right of appointment has once been validly exercised, the ultimate effectiveness of the appointment could not be regarded as depending on the accident, whether the appointer or the appointed should die first. So, by custom among the said Mahtons, where an appointed heir pre-deceased the adoptive father, the sons of the former are entitled to succeed, on the latter's death, to his estate. *Chajju v. Dalipa*, 51 P. R. 1906 = 124 P. L. R. 1906.

CHATTERJI and KENSINGTON, JJ.

References.—(a) 50 P. R. 1898 (F.B.) and 188 P. R. 1894, R.

(93) *Khattars of the district of Attock—Alienation by daughter of estate inherited from father—Suit by her nieces for declaring the alienation void against them, whether maintainable.*

Customs (peculiar to Punjab).—(Continued.)

Apart from tribal custom, there is no natural presumption, as a matter of jurisprudence, that an heir, simply as prospective heir, can control the acts of the person whose estate in the ordinary course, he or she may in future inherit. In Punjab, in the case of agricultural tribes, such a power of control belongs by custom to the nearer male agnates of the proprietor and in the case of such tribes as Jats and Rajputs, such a power is usually presumed. Similar presumption, however, could not be made in favour of control by a female since control by a male agnate has the effect of keeping the property in the agnatic group whereas control by a female could have no such effect.

So in the present case, where the parties were Khattars of Attock, it was held that an alienation by the daughter of property inherited by her from her father, the daughters of the brothers of the latter were not entitled to sue for a declaration that the alienation by their niece was not such as could affect their reversionary interest, plaintiffs having no *locus standi* to maintain such a suit in the absence of an established custom *ad hoc*. *Nur-ul-Nissa v. Gathar-ul-Nissa*, 61 P.R. 1906.

JOHNSTONE and RATTIGAN, JJ.

(34) *Gujars of the Rawalpindi District—Alienation by devise of ancestral property, by sonless proprietor in favour of daughter and daughter's son—validity of bequest—Burden of proof, presumption.*

The parties in this case were Gujars of the Gujar Khan tahsil, Rawalpindi District. One S, by his will, bequeathed the whole of his property to his daughters and a daughter's son Q to the exclusion of his near male collaterals and the present suit was instituted with the object of getting the bequest declared invalid as against the reversionary rights of plaintiffs, the sons of Q. The crucial question in the case was whether the will in dispute was or was not valid by custom. The lower Court granted plaintiffs a decree to the effect that the will was ineffectual on plaintiff's reversionary rights. *Held*, the initial presumption, that a sonless proprietor has not the right to so alter the devolution of his ancestral immovable property as to make it descend to his daughters and their sons in preference to his agnatic heirs, differs in its weight or force according to the circumstances of each case. In the present

Customs (peculiar to Punjab).—(Continued.)

case, the parties of the Gujar of Rawalpindi, a Muhammadan endogamous tribe, living in that part of the Province where the agnatic theory is not admitted to strictly, the onus of proving the validity of the testamentary gifts in question, could be regarded as having been so far sufficiently discharged as to shift the burden, of proving their invalidity, on to the shoulders of the plaintiffs; in other words, under the circumstances of this particular case, the defendants have to be regarded as relieved of the general burden of proving the validity of the devises in question and the plaintiffs as bound to establish that such alienations are not valid by custom; and plaintiffs having failed to establish the same, the suit ought to be dismissed. *Mohla v. Fakir*, 62 P.R. 1906—126 P.L.R. 1906.

JOHNSTONE and RATTIGAN, JJ.

References.—48 P.R. 1906 (F.B.), 71 P.R. 1904 and 73 P.R. 1895 (F.B.), *Duo*: 86 P.R. 1906, 67 P.R. 1904 and 52 P.R. 1905, R.

(35) *Pre-emption—Parties claiming by right of vicinage—Burden of proof—Kucha Masjid Khajur, Delhi.*

Suit for pre-emption in respect of a house situate in the city of Delhi. The question for decision was whether the plaintiff, whose house adjoined the house sold and opened into the same street, had a preferential right to pre-emption, as against the vendee whose house adjoined the house sold but at the back and opened into a different street. The plaintiff having failed to show the prevalence of the custom alleged by him, *held*, that he was not entitled to the decree sought by him. *Dharmmal v. Kalu*, 67 P. R. 1906.

JOHNSTONE and RATTIGAN, JJ.

References.—17 P.R. 1908, 88 P.R. 1888 and 86 P. R. 1897, F.

(36) *Pre-emption—Claim by virtue of ownership of opposite house but separate from the one sold—Punjab Laws Act, 1872, S. 11—onus of proof—Mohalla Kakkharian in the city of Lahore.*

Plaintiff, owner of a house, opposite to that sold, in the same alley, sued for pre-emption in respect of the latter house. There was no evidence in the case as to the prevalence of any custom or right of pre-emption in the locality by owners of opposite houses. *Held*, that, it being necessary for the plaintiff to prove that the

Customs (peculiar to Punjab).—(Continued).

custom of pre-emption prevailed in the particular locality and, also, that it was enforceable by him by virtue of the position of his house in relation to that hold, and the plaintiff having failed to establish the latter proposition, he was not entitled to a decree, even assuming that he established the first. (c). *Blahi Bukah v. Miran Bukah*, 88 P.R. 1906—128 P.L.R. 1906.

ROBINSON and CURRY, JJ.

References.—107 P.R. 1900, doubted. 38 P.R. 1888, 16 P.R. 1890, 108 P.R. 1896, 34 P.R. 1897, 33 P.R. 1898, 109 P.R. 1900, 189 P.R. 1892 and 86 P.R. 1901, R.

(37) *Inheritance—Widow's right to succeed to her deceased husband's collaterals—Alienation by widow—right of collateral's widow to contest such alienation—Ghirths of Kangra District.*

Plaintiff, a Ghirth by caste, in tahsil, Hamirpur, District, Kangra, sued to set aside an alienation by the widow of a collateral of her deceased husband, on the ground that she was entitled to succeed to such collateral by virtue of a custom prevailing in the District. Her right to succeed collaterally and her right to question the alienation were disputed by the defendant. *Held*, that, by virtue of a custom among Ghirths in the District in question, a widow was entitled to succeed collaterally to any property to which her husband, if alive, could have succeeded, and that, consequently, the plaintiff was competent to question the alienation in question. *Laboni v. Radhe*, 72 P.R. 1906.

CLARK, C.J. and LAL CHAND, J.

References.—56 P.R. 1891, 111 P.R. 1891, and 90 P.R. 1895, R.

(38) *Inheritance—Sikh Jats of Sirsa Tahsil—Right of a son of a widow by her second husband to succeed to the estate of her first husband.*

The parties to this suit were Sikh Jats of the Sirsa Tahsil. The question for decision was whether the son of a widow, by her second husband, takes the property of the first husband, to the exclusion of the male collaterals of the latter. The plaintiff, who was a son of the deceased widow by her second husband, alleged a special custom to be prevalent in the tribe to which he belonged, recognising his right to succeed to the property of his mother's deceased first husband. On his failure to prove the custom alleged, *held*, he was not entitled to

Customs (peculiar to Punjab).—(Continued).

succeed to the estate of the first husband in preference to the latter's collaterals. *Kanwar Singh v. Ramparan Singh*, 75 P.R. 1906.

BRID, C.J. and CHATTERJI, J.

(39) *Pre-emption—pre-emption on sale of agricultural land on ground of vicinage—Mansa Chathan Miran Khan, Tahsil Shujabad, Multan District.*

Plaintiff and defendant were both *Khowtars* in the village, in which the land sold was situate. The plaintiff's claim for pre-emption was based on the ground of vicinage. *Held*, that, the custom of vicinage not having been established by the plaintiff, the plaintiff's suit was liable to dismissal. *Thakar Das v. Metam Mal*, 77 P.R. 1906.

JOHNSTON and BATTIGAN, JJ.

Reference.—29 P.R. 1880, R.

(40) *Pre-emption, right of, on sale of shops—Chandini Chowk Bazaar, Delhi City—Vicinage.*

Suit for pre-emption in respect of the sale of a shop in the Chandini Chowk Bazaar of Delhi City. The plaintiff was the owner of a house at the back of the shop in question. The defendant was a stranger to the locality. The questions for decision were (1) the existence of a custom of pre-emption applicable to shops in the Chandini Chowk, and (2) whether the plaintiff who was an owner of a house at the back of the shop not opening on to the Chandini Chowk itself but on to a side street, was entitled to exercise right of pre-emption. *Held*, (1) that the custom of pre-emption in respect of sale of shops does exist in the Chandini Chowk Bazaar of Delhi City and (2) the plaintiff, as the owner of a house at the back of the shop in question was entitled to exercise the right of pre-emption, the defendant vendee having failed to prove a special local custom disentitling the owner of a house at the back to exercise the right of pre-emption as against a mere stranger to the locality. *Prag Ra v. Murari Lal*, 81 P.R. 1906.

KENNEDY and CHITTY, JJ.

References.—88 P. R. 1905, F., 17 P. R. 1895, R.

(41) *Inheritance—succession adopted son in default of legal descendants—inheritance property and self-acquired property.*

Customs (peculiar to Panjab).—(Continued).

The question in this case was whether the self-acquired property of a person adopted by the customary form of appointment of heir devolves on his death without lenial descendants on the collaterals of his adoptive father or on the heirs of his natural family. *Held*, that the self-acquired property must be treated as if the adopted son had never been adopted, because, a customary appointment as heir does not take the adopted son out of his natural family for all purposes, and it must therefore go to those who would have been the heirs of the acquirer had he not been adopted, *viz.*, to the members of his natural father's family. **Punjab Singh v. Khazan Singh**, 88 P.R. 1906=149 P.L.R. 1906.

RMD, J.

References.—76 P.R. 1893, 12 P.R. 1892 and 4 P.R. 1900, R.

- (42) *Alienation—Gift of ancestral property of a sonless proprietor by his widow to her daughter—Gift over by the daughter again to her daughter—validity of the gift: among Calchisar of Mauza Chachar, Shahpur District.*

Though, in effect, the widow of a Chachar, would take his estate for life without power to alienate outside Mauza Chachar, an established custom obtains in the said Mauza which enables the widow to alienate the land of her husband to her daughter if that daughter be married within the village. In the present case, the gift by the widow to her daughter, married within Mauza Chachar and the gift again by the daughter to her own daughter in circumstances precisely similar, not having been shown by the plaintiffs to be invalid, must be held to be valid and not contrary to custom. **Nawab v. Wallan**, 91 P.R. 1906.

ROBERTSON and CHITTY, JJ.

References.—19 P.R. 1903, D., 32 P.R. 1895, 19 P.R. 1897, 112 P.R. 1900, R.

- (43) *Ghuman Jats of Sialkot, collaterals is the eighth degree, right of, to contest alienation by sonless proprietor—Burden of proof.*

Plaintiffs alleging that the property in question was ancestral, in the sense of its having been owned by the common ancestor of themselves and the vendor, sought to have it declared that the alienation by the vendor, was of no effect as against them. Agreeing

Customs (peculiar to Panjab).—(Continued).

with the Court of first instance, the lower Appellate Court held that the burden of proving the right of collaterals so far removed as the plaintiffs were, to contest the alienation by the proprietor, lay upon the plaintiffs, and that they failed to discharge the same; *held* that a right to succeed to an estate after the death of the owner does not always necessarily imply, even under customary law, the right to control its disposal and that the lower Appellate Court was right in having laid the onus of proving their right to contest the alienation in question on the plaintiffs, and *held* that they have failed to discharge it. **Natha Singh v. Mohan Singh**, 98 P. R. 1906.

ROBERTSON and CHITTY, JJ.

References.—2 P. R. 1901, 75 P. R. 1898, 79 P. R. 1891 and 126 P. R. 1890, F.

- (44) *Alienation by widow—Compromise of objection by plaintiff's father, how far binding on son—Suit by son to contest the alienation afresh, whether maintainable.*

The plaintiff's father, the nearest reversioner to a widow's estate, objected to an alienation by her but compromised the matter *bona fide* for the benefit of the reversioner believing that the arrangement was a proper one. Plaintiff however instituted the present suit contesting the said alienation afresh; *held*, that the lower Court was right in having decided that the plaintiff was bound by his father's compromise, since it cannot be maintained that, because a compromise, entered into in good faith by a reversioner or collateral contesting an alienation may appear to such reversioner's son or to some other more distant collateral to be less favourable than it might have been, such son or collateral thereby acquires a right to contest the alienation afresh. Further the plaintiff's father having entered into the compromise in good faith and plaintiff having obtained substantial benefit thereunder, it is not open to him to contest the alienation on the mere allegation that a better bargain might have been made. **Bhutta v. Khuda Bakhsh**, 97 P.R. 1906.

ROBERTSON and CHITTY, JJ.

References.—34 P.R. 1893 and 7 P.R. 1905, R., 15 P.R. 1903, F.

- (45) *Right of pre-emption based on vicinage, on sales of houses in Katra Moti Ram, Amritsar.*

Customs (peculiar to Punjab).—(Continued).

The right of pre-emption by vicinage having been held to obtain in respect of sales of house property in the various parts of the Amritsar city and the evidence, in this case, having established a large number of instances of such right obtaining in the said city, it was found that such right by reason of vicinage existed by custom in Katra Moti Ram, a sub-division of Amritsar. **Mamen v. Ghaunsa**, 99 P. R. 1906—180 P. L. R. 1906.

ROBERTSON and LAL CHAND, JJ.

References.—154 P. R. 1882, 58 P. R. 1900, 42 and 44 P. R. 1903, R.

(46) *Right of adopted son to succeed his natural father—Existence of natural brother—Jats of Tahsil Paniput, Karnal District.*

The question for decision in this case was whether, among the Jats of Tahsil Paniput, a son adopted into another family can succeed to his natural father when the latter leaves behind him another natural son. *Held*, the adopted son (plaintiff) was not entitled to succeed his natural father and take a share in the latter's estate, when there is in existence another natural son and when the adopted son, as it was found in this case, took by inheritance the entire estate of the adoptive father. **Mukh Ram v. Not Ram**, 100 P. R. 1906.

ROBERTSON and CHITTY, JJ.

Reference.—68 P. R. 1898, R.

(47) *Lohars of Kotli Loharan, Sialkot, matters of alienation among, whether governed by custom or Mahomedan Law—Burden of proof.*

The question for determination in this case was whether the parties, who were Lohars by caste, were agriculturists and governed by custom or were subject to Mahomedan Law; *held*, that the mere fact that some of the Lohars owned land could not go so far as to establish that they form an agricultural tribe and the evidence as a whole went to show that they were essentially a manufacturing class and that therefore it could not be said that the plaintiff had proved, as he was bound to do, that the Lohars were agriculturists and so governed by customary law. **Umaruddin v. Janto**, 101 P. R. 1906.

ROBERTSON and CHITTY, JJ.

(48) *Succession—Right of pattidars to succeed to an heirless co-sharer—burden of proof—*

Customs (peculiar to Punjab).—(Continued).

Mauza Murtazapur, Tahsil Kaithal, Karnal District—Jats of Tahsil Kaithal.

A Jat of Mauza Murtazapur, Tahsil Kaithal, died without leaving any heirs. Plaintiffs, *pattidars* of the village, in which the land in dispute, property of the deceased Jat, was situate, sued for possession of the land, on the ground that, by a custom prevailing in the village, they were entitled to succeed thereto, the deceased Jat having left no heirs. Plaintiffs belonged to a tribe different from the one to which the deceased had belonged; and the existence of the custom alleged by the plaintiffs was denied by the defendant, who belonged to the tribe to which the deceased had belonged. The question for decision was whether, by custom, the plaintiffs were, merely as *pattidars*, entitled to succeed. It was found that the tenure of the village was by a *chara*, the proprietary rights therein being held by a heterogeneous body of miscellaneous tribes. *Held*, that the plaintiffs, having failed to prove the existence of the custom alleged by them, were not entitled to succeed. **Harnam Singh v. Partab Singh**, 102 P. R. 1906.

REID and LAL CHAND, JJ.

References.—77 P. R. 1896, and 28 P. R. 1904, R.

(49) *Pre-emption—Houses—Mohalla Mashad in Sonapat town in Delhi District—Evidence—Instances.*

Held, that it was not proved that the custom of pre-emption prevailed generally in the town of Sonapat or particularly in the Mohalla Mashad where the property in suit was situate.

The instances in which pre-emption was decreed on the basis of a compromise or admission are certainly relevant and possess certain probative force as showing the existence of the custom, but when set against other instances, though fewer in number, in which after contest the custom was negatived or held as not proved, they cannot form a substantial foundation for finding that the custom prevails generally in the town. **Abdul Farah v. Mussammat Sarwar**, 85 P. L. R. 1906.

LAL CHAND, J.

(50) *Succession—Muhammadian Jats of Leiah Tahsil, Dera Ismail Khan Dist.—Daughter—Divorced daughter—Collaterals.*

Held, that the defendant, daughter of a sonless proprietor, who had been divorced by her

Customs (peculiar to Punjab).—(Continued).

husband, and on whom the *onus* lay, had failed to prove that by custom among Muhammadan Jats of Leiah Tahsil, Dera Ismail Khan District, she was entitled to succeed to the property of her father as against his near collaterals.

Little weight can be attached to an entry in a *Riwaj-i-am* with regard to the right of succession of daughters as against the collaterals when the entry is not supported by any instances. The fact that the *Wajib-ul-arz* of the village refers to the entry made in *Riwaj-i-am* as being correct does not make such entry reliable when it is opposed to instances allowing right to collaterals.

An alienation of land made by a daughter not entitled to succeed as heir under the Customary Law cannot be held to have been made by her on behalf of her mother when the daughter is in possession of the land of her father and her mother has not objected to the alienation. *Wali Nur v. Musammamat Ahsan*, 86 P.L.R. 1906=105 P.R. 1906.

JOHNSTONE and RATTIGAN, JJ.

(51) *Pre-emption—Punjab Laws Act (IV of 1878), s. 13—Wajib-ul-arz recording custom in favour of ek-jaddis only—Ancestral property—Burden of proof.*

Held, that where the entry in the *Wajib-ul-arz* records custom of pre-emption in favour of *ek-jaddis* only the co-shares in the village who are not *ek-jaddis* cannot succeed as against the vendee who owns no land in the village.

The term *ek-jaddis* as used in the pre-emption clause of a *Wajib-ul-arz* means persons descended from the ancestor who once held the land which is the subject of the sale, and not agnates only of the vendor.

There is no presumption that land held by a person had descended to him from his father and was not acquired by him. *Jhenfu v. Ram Dial*, 92 P. L. R. 1906.

ROBERTSON and RATTIGAN, JJ.

(52) *Alienation—Khatri of Bhagiana Talianwala, Gurdaspur, alienation by childless proprietor among, applicability of custom or Hindu Law to—burden of proof.*

In this case the parties were Khatri of Bhagiana Talianwala, Gurdaspur, and both the lower courts held that the parties were not agriculturists in the sense of being bound by agricultural custom. *Held*, that the onus was laid upon the plaintiff to show that

Customs (Peculiar to Punjab).—(Continued).

matters of alienation, among the Khatri, were governed not by their own personal law, viz., the Hindu Law, but by the ordinary agricultural custom of their neighbours. Plaintiffs having failed to discharge the onus, they were rightly non-suited by the said Courts. *Kaka v. Labh Chand*, 106 P.R. 1906.

ROBERTSON and CHERRY, JJ.

References.—101 P.R. 1884, 107 P.R. 1887 and 81 P.R. 1896, R.

(58) *Succession—Agnates of a deceased proprietor whether mere community of descent gives right of succession to, in respect of lands acquired in a different village from that of the proprietor—Cases governed by Customary Law, when personal law should be resorted to in the decision of.*

The question was referred to the Full Bench, in this case, whether it was laid down by certain decided cases and particularly by *Lokha v. Hari* (a) that mere community of descent gave the agnates of a deceased land-owner no right of succession to acquired land let by him in a village, in which they did not own any land, and whether such a rule could be deduced from the well-established principles of Customary Law. *Held*, that, although the language in *Lokha v. Hari* (a) is not free from doubt, there is no clear indication of any intention, either in that decision, or in any of the others referred to, to lay it down as a rule that mere community of descent could not give the agnatic descendants of a deceased proprietor a right to succeed to his lands in a village, in which they do not own any land and that such a rule is not supported by judicial precedent and is not fairly deducible from the general principle of Customary Law.

Another point argued in this case and treated as a question which an expression of opinion, by the Full Bench, was required, was, whether, among parties ostensibly governed by Customary Law, it was permissible to fall back on their personal law for the decision of the point in issue, where no definite rule of the former law applicable to the case before the Court could be found. It was held (CLARK, C.J., and KIRKPATRICK, J., *Dissenting*).

Per CHATTERJI, J.—A statement by the parties that they are governed by the Customary Law, cannot be conclusive on the point and absolve the Court from the duty of ascertaining and

Customs (peculiar to Punjab).—(Continued).

applying the proper law to be administered. The allegation of the parties cannot, by itself, justify the Courts, after legitimate methods of enquiry into custom failed to derive from it a rule of decision, in refusing to look beyond Customary Law for such a rule. So, where there is no rule of decision available under Customary Law, the Courts are bound to fall back on personal law as a last resort.

PER RAO, J.—A party who comes into Court with the allegation that he is bound by Customary Law is not precluded from falling back on his personal law and it is the duty of the Court, whenever necessary, to ascertain and administer the same.

PER ROBERTSON, J.—In regard to matters dealt with in S. 5 of the Punjab Laws Act, when any custom is set up and proved to obtain, custom shall be the rule of decision, but, when no such custom has been established, the rule of decision shall be the personal law of the parties whether or not they can be shown to be governed in certain other matters by custom. *Daya Ram v. Sehul Singh*, 110 P.R. 1906 (F.B.)

CLARK, C.J., and REID, CHATTERJI, ROBERTSON & KENSINGTON, JJ.

References:—(a) 64 P.R. 1898; 18 P.R. 1896, 73 P.R. 1896 & 108 P.R. 1900, considered and discussed.

(54) *Inheritance, among Arains of Ludhiana, whether widow entitled to inherit along with step-son.*

The question in this case was whether plaintiff as the widow of one N was entitled to claim a half share in the inheritance from N as against her stepson, the son of N by another wife. The lower Appellate Court maintained that the plaintiff, as a widow, is entitled, by custom, to half the estate of her husband on a life tenure and deposed for her accordingly. *Held*, following *Shada v. Jo*, (a) that an alleged custom that a widow is entitled, as of right, to a share in the inheritance of sons by another wife, is one of which clear and strong proof should be required and that in the present case the plaintiff, on whom the onus lay of proving the customs on which she relied, having failed to discharge the same, her suit to receive a half share in the inheritance must be dismissed, though she might be entitled to receive cash maintenance. *Haji Baksh v. Khawal*, 116 P.R. 1906.

RATTIGAN & LAL CHAND, JJ.

Customs (peculiar to Punjab).—(Continued).

Reference (a)—107 P.R. 1898, R.

(55) *Succession among Jats of Ludhiana, to estate of deceased adopted son leaving no son—Right of heirs of adoptive father of deceased.*

Under the general principles of succession to ancestral land, in a Punjab village community, as laid down in prior Full Bench cases, (a) it was held in this case that by custom prevailing among the Jats of Ludhiana, on the death of an adopted son, without leaving any male lineal descendants, the estate held by the deceased, as such adopted son, would not pass to the collateral heirs of the natural family of the deceased, but would at once revert to the adoptive father and then descend to the descendants of the latter. *Gurditta v. Amar Singh*, 117 P.R. 1906.

RATTIGAN and LAL CHAND, JJ.

References:—(a) 4 P.R. 1892 (F.B.) & 12 P.R. 1892 (F.B.), F. 58 P.L.R. 1901, D.

(56) *Gift by childless proprietor to daughter's son and son's daughters, whether valid by custom—among Arains of Jullundur District.*

The gift in this case had been made by a sonless Arain of Jullundur, in favour of his daughter's son and a son's daughter married to another daughter's son. *Held*, that a gift, by an Arain of the said District, of his entire estate, in favour of his daughter's son was valid by custom, and there could be no distinction in principle between such a gift and the other one made in favour of a son's daughter, especially where, as in the present case, she had been married to daughter's son. *Bala v. Nur Muhammad*, 123 P.R. 1906.

LAL CHAND, J.

(57) *Pre-emption by right of vicinage in respect of houses, obtaining in Amritsar.*

Held, that the custom of pre-emption, by right of vicinage, in respect of houses, obtained in a large number of the *Katras* or sub-divisions of Amritsar (a).

It was contended in this case that the contiguity of the plaintiff's house at the back of the house in question was not sufficient. *Held*, the fact that the plaintiff's house was situated on the back side, or that it happened to form part of another Municipal Division, was not of any importance in considering the right of pre-emption. *Lachman Das v. Kashi Ram*, 140 P.R. 1906.

KENSINGTON & CHITTY, JJ.

Customs (peculiar to Punjab).—(Continued).

References.—(a) 46 P. R. 1882, 154 P. R. 1882, & 58 P. R. 1900, R.

- (58) *Custom—Adoption—Appointment of heir—Succession—Death of appointed heir during his adoptive father's lifetime—Rights of appointed heir's sons—Mahtons of Jalandhar District.*

Held, that, according to general principles of Customary Law, in the absence of proof of custom to the contrary, the sons of an appointed heir, who has died during his adoptive father's lifetime, are entitled to succeed to his property on the latter's death. **Chhajju v. Dalpa and Prem Singh**, 124 P. L. R. 1906=51 P. R. 1906.

CHATTERJI and KENSINGTON, JJ.

References.—50 P. R. 1898 (F.R.) and 178 P. R. 1894, R.

- (59) *Custom—Alienation by father—Alienation by childless male proprietor—Sale—Part of consideration fictitious—Necessity—Kalas of Alawalpur town in Jalandhar District.*

The plaintiff, a minor, sued for a declaration that a sale of ancestral property, effected by his father and uncle, was invalid, as against his right, for having been made without necessity. It was found that a part of the consideration entered in the sale deed was fictitious and was entered to defeat pre-emptors, that the rest of the consideration consisted of just antecedent debts and was not far short of the value of the property.

Held, that the suit must be dismissed. **Devi Chand v. Gurcharan Singh**, 127 P. L. R. 1906.

JOHNSTONE and RATTIGAN, JJ.

- (60) *Custom—Succession—Occupancy rights—Karabati—Near relations resident in other villages.*

There is no reason to limit the meaning of the word, *Karabati* when used in a *Wajib-ul-arz*, as relations entitled to succeed to occupancy rights left by the deceased occupancy tenant, merely to such near kinsmen as are residing in the village, in which the deceased held occupancy rights. **Maman v. Kartar Bakhsh**, 125 P. R. 1906.

JOHNSTONE and RATTIGAN, JJ.

References.—98 P. R. 1891, *Expt.*, 6 P. R. 1900, R.

Customs (peculiar to Punjab).—(Continued).

- (61) *Custom—Succession—Escheat—Bhaya-chara village—Right of pattidars on the death of an owner without heirs—Bars of Murtazapur village, Karnal District.*

Held, that, on the whole, it has never been definitely decided by the Chief Court that the members of a village community are the ultimate heirs of any co-sharer, among them, who dies without heirs, in every instance, without regard to the constitution of the village or the facts of the particular case, which comes up for decision.

Held, that the plaintiffs, pattidars of Murtazapur village in the Karnal District, belonging to Ror caste, were not entitled by custom to succeed as mere pattidars to the land of a Jat, who had died without heirs, the village being a Bhayachara one owned by miscellaneous castes and tribes. **Harnam Singh v. Partab Singh**, 129 P. L. R. 1906.

REID and LAL CHAND, JJ.

- (62) *Succession—Pagwand—Chundawand—Sarai Jats of Dholpur village, Batala Tahsil, Gurdaspur District.*

Found, that among Sarai Jats of Dholpur village, Batala Tahsil, Gurdaspur District, custom of *chundawand* prevails in matters of succession. **Labh Singh v. Narain Singh**, 142 P. L. R. 1906.

LAL CHAND, J.

- (63) *Succession—Religious institution—Burden of proof—Jogi Fakirs of Bhera—Registration—Admissibility in evidence of compulsorily registrable unregistered document relating to immovable property for collateral purpose.*

The office of Mahant is generally elective and not hereditary.

The plaintiff brought the present suit for possession as full owner of certain property of a minor religious institution (or *jhuggi*), which, he alleged had belonged solely and absolutely to his Pir, a *Jogi Fakir* of Bhera. The plaintiff withdrew his claim to succeed as full proprietor, and to treat the property in suit as private property, subject to the ordinary rules of inheritance and contended that he was entitled to succeed as a *chela* and that, installation to the *gaddi* was not required by the custom of the institution.

Held, that the plaintiff had failed to show any custom, enabling him to succeed, irrespec-

Customs (peculiar to Punjab).—(Concluded).

tive of election or installation or nomination to the Headship of the *phuggi*, and that his being a *chela* of the last holder of the institution was not sufficient to support his claim.

It lies in the plaintiff to prove his title, and it is not sufficient for him to attack the title of the defendant, who is in possession.

A compulsorily registrable document affecting immovable property, though inadmissible as evidence of a transaction relating to the property, may be admitted in evidence to prove collateral facts. **Babu Ganga Nath v. Rabel Nath**, 148 P.L.R. 1906.

JOHNSTONE and HURRY, JJ.

See, also, I, 373 to 388 and *Hindu Law (Alienation)*, No. 2; *Pre-emption*, Nos. 1, 6, 7, 13, 27.

Cutahi Menons.

See, I, *Hindu Law (Succession)*, No. 5 and *Mahomedan Law (Will)*, No. 2.

Cypres.

See, *Civil Pro. Code*, No. 275.

Damages.

(1) *Breach of contract—procuring a breach of contract—Knowledge of the contract—Action for damages—Tort.*

To support an action to recover damages for procuring a breach of contract, the plaintiff must establish not merely that the defendant procured others to commit a breach, but also that he did so, knowing that there was that contract. **Pandurang Balaji Apte v. Nagu Dagdu Chagula**, 8 Bom. L.R. 610=30 B 509.

JENKINS, C.J., and HEATON, J.

(2) *Deed—Construction—Lessee of occupancy holding selling his rights—covenant for quiet enjoyment—Vendee dispossessed—measure of damages.*

Where a lessee of an occupancy holding transfers his rights under a sale-deed convenanting that, if the transferee loses the holding within certain time, he will be entitled to get damages from his transferor, and the transferee is ejected within that time, he is entitled to recover damages from him (transferor); the measure of damages being the loss which the transferee will sustain by the deprivation of the enjoyment of the land for the residue of the term. **Ali Hasan v. Ori Lal**, 8 A.L.J. 501=A.W.N. (1906), 207.

STANLEY, C.J. and KNOX, J.

Damages.—(Concluded.)

(3) The question of the amount of—in an action for slander is a question of fact—See **SLANDER**, No. 1, 8 C.L.J. 140.

(4) Suit for—for malicious prosecution started by servant in the interest of master—Liability of latter for—See **MALICIOUS PROSECUTION** No. 4, 10 C.W.N. 723.

(5) Conversion of stolen goods—Managing partner receiving goods—Liability of firm—Measure of—See **CONVERSION**, No. 1, 10 C.W.N. 1058.

(6) Special, words imputing unchastity actionable without proof of—See **DEFAMATION** No. 1, 4 C.L.J. 388.

(7) Separate liability for — of each of certain joint wrong doers—See **TORTS**, No., 1, 21 T. L. R. 211.

(8) Suit for—for false imprisonment—acquittal of accused—maintainability of suit—information given to the Police—See **FALSE IMPRISONMENT** Nos. 1, 3 A. L. J. 650.

See, also, I, *Contract*, No. 6; *Contract Act*, Nos. 12, 15, 18 & 25; *Hundi*, No. 1; *Jurisdiction (of High Court)*, No. 5; *Landlord & Tenant*, Nos. 6, 9; *Libel* No. 3; *Limitation Act*, No. 43; *Nuisance*, No. 1; *Specific Relief Act*, No. 10; *Right of suit*, No. 21; *Tort*, No. 1; *Trade mark*, No. 1; and *Act VI of 1898*, No. 1.

Damdapat.

(1) The rule of—merely limits accruing rights and does not divest rights that have accrued—See **INTEREST**, No. 1, 8 Bom. L.R. 82.

(2) Rule of—if applicable in Insolvency proceedings—See **CIV. PRO. CODE**, No. 206, 10 C.W.N. 884.

Darkhast Rules.

(1) *Power of Civil Courts to question reasons assigned by Revenue authorities for granting or refusing applications for Darkhast—Board's Standing Order No. 15, Rules, 4, 5, 7, 11, 13, & 14—Whether grant of patta is a matter of contract.*

A grant of land was made to the plaintiff, on a *Darkhast* application made by him to a *Tahsildar*, under Rule 4 of Standing Order No. 15 of the Board of Revenue, subject to the result of any appeal that might be preferred. The appellate revenue authority annulled the grant.

Dark-hast Rules. —(Concluded).

on the ground that there was irregularity in issuing "A" notices, by reason of the signatures of the adjacent land-holders not having been obtained.

Held, by WHITE, C.J. —Regarding the omission to obtain such signatures, it must, in the absence of evidence to the contrary, be presumed that the officers took the signatures, other than those of adjacent land-holders, because, the adjacent land-holders were absent or illiterate. The maxim "*Omnino prae-sumuntur rite esse acta*" applied. The fact of such omission did not *per se* render the Tahsildar's grant invalid and the grant was, therefore, binding on the Crown.

It is open to a Civil Court to set aside an order of an appellate Revenue tribunal.

Held by BENSON, J. —The *patta* is in the nature of a mere bill and not of a grant or conveyance. The issue of a *patta* has not the effect of confirming the conditional grant by a Tahsildar, during the pendency of the appeal.

It is not open to Civil Courts to discuss the sufficiency, or otherwise, of the grounds on which the *Dark-hast* authorities—whether original or appellate—grant or refuse Government lands to applicants, so long as they act within the scope of their authority.

Obiter. —It would be different if the Revenue authorities, purporting to act under the *Dark-hast* rules, acted outside the scope of their authority. *Muthu Yeera Yandayan v. The Secretary of State for India in Council*, 1 M. L. T. 278 = 39 M. 461.

WHITE, C.J. and BENSON, J.

References. —26 M. 368, 18 M. 434, 26 M. 742, 12 M. 404, 19 M. 324, 6 M. 309 and 1 M. I. A. 306, R.

Das-puini Lease.

See I, Landlord and Tenant, No. 11.

Debts.

(1) Trust-property, non-liability of, to debts contracted by trustees—*See Trusts, No. 2*, 16 M. I. J. 412.

(2) Arrears of revenue are within the meaning of Act XI of 1859—*See Act XI of 1859 (REVENUE SALE LAW (B. C.))*, No. 1, 10 C. W. N. 548.

(3) Appropriation of debt due to minor by third party. *See JOINT POST-MASONS, No. 1*, 147 P.L.R. 1906.

Debts. —(Concluded).

See, also, I, Civil Code, No. 162, Competency of Court, No. 2 and Jurisdiction (of Civil Courts), No. 1.

Debutter.

See I, Religious Endowments, No. 1.

Debutter Estate.

See I, Contract Act No. 23.

Declaration.

Suit for—Proper course against tenant alleging that he is an under-proprietor—*See Possession, No. 6*, 90 C. 292.

Declaration of title.

Suit for, with consequential relief—Court fee—*See COURT FEES ACT, No. 2*, 8 Bom. L. R. 885.

Declaratory Decree.

(1) *Suit for cancellation of bond on ground of fraud—omission to claim consequential relief, effect of*

Plaintiff sued for cancellation of a mortgaged deed executed by him to the defendant, on the ground of fraud and want of consideration. The first two Courts found that no fraud was proved. The first Court dismissed the suit but the lower appellate Court, finding that the deed was supported by consideration to a less extent than that mentioned in the deed, and treating the suit as one for declaration, gave plaintiff a decree declaring that the bond was supported by consideration to such smaller extent. *Held*, that the suit ought to have been dismissed, even assuming that the lower appellate Court was right in treating it as one for declaration, because the plaintiff being, at the date of the suit, entitled to claim consequential relief, omitted to claim it. The High Court dismissed the suit altogether. *Chakka Subbiah v. Maddali Lakshminarayana*, 29 M. 298.

WHITE, C.J. and SUBRAMANIAM AYYAR, J.

(2) *Suit for income of land—Direction in the decree for future annual payments, not prayed for—Decree merely declaratory—Separate suit for the future income, maintainability of—*

Suit for the recovery of the income of certain trust lands for three years. Judgment was given for the plaintiff for the income of the three years but the decree, as drawn up, directed the defendants to make such annual payments towards the income in future also. *Held*, though the decree had been so drawn up as

Declaratory Decree.—(Continued).

to appear, at first sight, to be an executable decree for future mesne profits, also, yet as there had been no prayer in the plaint for such a decree (a) and no date was fixed therein for the payment of such future profits in each year, the decree must be regarded as merely declaratory of the plaintiff's right and not as capable of being executed each year for the future mesne profits, to recover which a separate suit was therefore maintainable (b). *Doraswamy Boush Packiri v. N. Idangapiranthan*, 1 M.L.T. 60.

BURSON and MOORE, JJ.

References.—(a) 12 M. 183, R. and D. (b) 7 M. 80, R. and F.

(3) Suit to obtain a—to the effect that the person alleged to have been adopted is not the plaintiff's adopted son, maintainability of—See SPECIFIC RELIEF ACT, No. 9, 20 M. 48.

(4) Suit for construction of a Hindu will and for declaration incidental thereto—See SPECIFIC RELIEF ACT, No. 10, 8 C.L.J. 224.

(5) Suit by presumptive reversioners to declare adoption by widow invalid—Decree how far binding on other reversioners—See HINDU LAW (REVERSIONERS), No. 8, 1 M.L.T. 188 (F.B.)

See, also, *I, Landlord and Tenant*, No. 54.

Declaratory suit.

(1) *Declaration that plaintiffs were Rajputs*
—Cause of action.

The defendants made a statement before the revenue authorities, wherein they stated that the plaintiffs were Sheikhs, and, as such, not entitled to various rights in the village to which Rajputs alone were entitled. They added that, if plaintiffs considered that they were legally entitled to these rights, it was open to them to bring a suit in the Civil Court to enforce them. The plaintiffs brought a suit for a declaration that they were Rajputs of the specified got and for other relief. The Divisional Court dismissed the suit on the ground that a suit for the declaration asked for did not lie as no cause of action had arisen in their favour.

Held, that the judgment of the Divisional Court was wrong and the suit was maintainable, the statement made by the defendants having given a cause of action to the plaintiffs. *Takaddus Hussain Khan v. Wasir Ali Khan*, 9 P.L.R. 1808.

ROBERTSON and RATTIGAN, JJ.

(2) Period of Limitation for, under Art. 120 of the Limitation Act—See LIMITATION ACT, No. 88, 4 C.L.J. 568.

Declaratory suit.—(Continued).

(3) Maintainability of—by a candidate at a by-election for a municipal councillorship for declaration of his right to come forward as a candidate—See SPECIFIC RELIEF ACT, No. 10, 8 Bom. L.R. 208.

(4) Maintainability of—where relief by way of injunction, which can be asked for is not asked for—See SPECIFIC RELIEF ACT, No. 11, 8 A.L.J. 816.

(5) Under S. 288, Civ. Pro. Code, maintainability of, when no further relief is asked for—See CIV. PRO. CODE, No. 168, 20 M. 151.

(6)—for release of property from attachment—Valuation—See JURISDICTION (GENERAL), No. 2, 71 P.L.R. 1806.

(7) Effect of rejection of application for Registration entitling party to institute a—See LAND REGISTRATION ACT, No. 1, 4 C.L.J. 568.

(8) *Onus of proof as to title—Adverse possession, effect of—Grant of Patta, whether confers new title.*

A party, who is in full possession of certain property of his, and is in exercise of all rights in respect of it but seeks for a mere declaration in connection with the same, is bound to establish his title thereto by means of positive evidence of such title. But, however, although he may fail to make out that he acquired his title to the property in the very manner alleged by him, yet, if, admittedly, he is found to have been in possession of the property, for over 12 years, the effect of such possession would be to extinguish other titles, if any existed, and he would be entitled to the declaratory decree sought to be obtained by him (a).

Held, also, that a mere grant of a Patta confers no new title except in those special cases where the Patta itself constitutes the title deed for the land (b). *Padmanabhan Nilakandan v. Kunchen Nathan*, 21 T. L. R. 87.

HUNT and PADMANABHA AIYAR, JJ.

References:—(a) 10 T. L. R. 70, F. (b) 2 M. 838, 20 W. R. 186, 20 B. 798; 20 I. A. 82 & 14 T. L. R. 140, R.

Decree.

(1) *Effect of Court's decree on order for maintenance under S. 488, Cr. P. Code.*

Courts exercising jurisdiction under S. 488 of the Cr. P. Code, often decide questions of marriage, divorce, paternity and so forth but such decisions are not binding on the parties in

Decree.—(Continued).

their litigations in Civil Courts. On the other hand, if a competent Civil Court has decided that A is not and never has been the wife of B, then a Magistrate cannot, in proceedings under S. 488, hold that A is the wife of B and order B to maintain her. The Magistrate is bound, in such proceedings, to take into consideration the effect of a Civil Court's decree, if any, on the matters he has to decide in the proceedings. **Newab Zulfiar Khan v. Mumsamat Zainab Begam**, 9 O.C. 49 (B).

SCOTT and CHAMBER, J. CS.

Reference.—14 C. 276, F.

(2) *Mortgages in the Punjab—Decrees for redemption of—should be without and time limit for payment.*

Since, in the Punjab, a mortgagor, who has obtained a decree for redemption but has failed to execute it within time, has the right to bring a fresh suit for redemption (a), a provision in such a decree fixing a time for the payment of the amount due under the mortgage and declaring that, on failure to do so, the right of redemption is to be barred (b), would prove an unjust hardship on the plaintiff-mortgagor. The decree should be without any time limit for payment and the plaintiff left to execute it within the time allowed by law. **Himayat Ali v. Jowala Sarup**, 100 P.R. 1905 = 16 P.L.R. 1906.

CHATTERJI and JOHNSTONE, JJ.

References.—(a) 86 P.R. 1877 ; 14 P.R. 1881 ; 90 P.R. 1887 and 98 P.R. 1879, R. (b) 7 M. 423, 8 M. 478 and 21 M. 18, R.

(3)—of a civil Court for partitions cannot be fully executed until the decree-holder's name is recorded in the revenue papers under Act III of 1901—See CIV. PRO. CODE, No. 145, A. W. N. (1906) 58.

(4) A—cannot be taken as negating any right conceded by all the parties and with reference to which the Court was not called upon to adjudicate—See TRANSFER OF PROPERTY ACT, No. 71, 29 M. 84.

(5) Under S. 90 of the Transfer of Property Act, when to be made—See RES JUDICATA, No. 7, 3 A.L.J. 171.

(6) An order remanding, for trial, a rent suit under the North West Provinces Tenancy Act does not amount to a—as defined in S. 2, Civil Procedure Code—See ACT II of 1901 (NORTH WEST PROVINCES TENANCY), No. 26, 3 A.L.J. 80.

Decree.—(Continued).

(7)—on compromise containing Court's directions as to costs, no appeal in respect of the costs lies from a—See APPEAL (GENERAL), No. 4, 2 N.L.R. 49.

(8)—passed on compromise entered into by pleader—application for review on ground of pleader's want of authority to compromise, rejected—Fresh suit to set aside decree—See RES JUDICATA, No. 14, 10 C.W.N. 529.

(9) It is not compulsory for the Court to allow contract rate of interest after the date fixed in—for redemption—See MORTGAGE (REDEMPTION), No. 9, 29 M. 170.

(10) An award under Ss. 26, 30 or 54 of Act I of 1894 (Land Acquisition) is a—within the meaning of S. 2, Civ. Pro. Code—See ACT I of 1894 (LAND ACQUISITION), No. 21, 53 P.R. 1906.

(11) Whether a separate suit lies to challenge a decree on the ground of error therein—See RIGHT OF SUIT, No. 5, 10 C.W.N. 1024.

(12) Conditional—for sale in a mortgage suit puts an end to the suit—See LIMITATION ACT (XV of 1877), No. 121, 11 C.W.N. 156.

(13) Effect of attachment of, on right of attaching creditor,—after sale but before confirmation—See CIV. PRO. CODE (XIV of 1882), No. 186, 11 C.W.N. 158.

(14)—for mesne profits against father, sons and grandsons if bound—See HINDU LAW (DEBTS), No. 4, 11 C.W.N. 163.

(15) Recital in a subsequent decree of terms, of a previous one, whether evidence of latter—See LIMITATION ACT (XV of 1877), No. 46, 11 C.W.N. 48.

(16) Suit to set aside, on ground of fraud, applicability of Art. 95 of the Limitation Act to a—See LIMITATION ACT, No. 59, 4 C. L. J. 472.

(17) in a suit upon a mortgage by conditions sale is in effect a decree for foreclosure though informal and irregular—See TRANSFER OF PROPERTY ACT (IV of 1882), No. 72, 4 C.L.J. 588.

(18)—directing registration—no specification in the—of time within which registration ought to be made—failure to present document within thirty days of First Court's decree—See REGISTRATION ACT, No. 32, 33 C. 1020.

(19)—for redemption, delivery of lands under includes delivery of crops on the lands—See CIV. PRO. CODE, No. 144, 3 L. B. R. 129.

Deceit.—(Continued).

(20) In par-gup-tion suit, whether subsequent resale by vendor could affect a—See *PRE-EMPTION*, No. 42, 2 N. L. B. 180.

(21) Form of—Dispossession of some co-owners by other—Suit for joint possession—See *JOINT PROPERTY*, No. 1, 27 A. 1888.

(22) by consent—Setting aside of—procedure—See *ACT XXXIII OF 1871 (PUNJAB)*, No. 1, 7 Bom. L.R. 659.

(23) Form of—in suit by one co-owner against others for joint possession and interest *pendente lite*—See *JOINT PROPERTY*, No. 4, A.W.N.(1906), 288.

(24) Limitation for suit to set aside a, on the ground of fraud—See *Limitation*, No. 18, 21 T. L. B. 41.

(25) *Ex-parte*—against minor, application to set aside, whether should be made only by guardian in suit, even when not formally appointed as such—See *Civ. Pro. Code (TRAVANCOR)*, No. 2, 21 T. L. B. 70.

(26) Question as to validity of a, whether could be gone into by Court to which it has been transferred for execution—See *Jurisdiction (OF CIVIL COURTS)*, No. 4, 21 T. L. B. 188.

(27) Satisfaction of, set up by decree-holder, whether necessarily to be recorded by Court—See *Civ. Pro Code (TRAVANCOR)*, No. 3, 21 T. L. B. 152.

See, also, I., *Act II of 1901 (N. W. P. Territory)*, No. 7; *Contract Act*, No. 12, *Civil Pro. Code*, Nos 1, 6, 83, 98, 100, 200, 226, 278, & 338; *Co-sharers*, Nos 5 & 6; *Court*, No. 13; *Execution of Decree*, Nos 24 and 79, *Government*, No. 7; *Joint owners*, No. 1; *Joint Property* No. 2 & 3; *Limitation Act*, Nos 6, 86, 190 & 138; *Practice (Miscellaneous Cases)*, No. 26 and *Revenue Sale*, No. 1.

Dedication.

I. *Religious Endowments*, No. 1.

Defamation.

(1) *Cause of action—Special damage—Unchastity, imputation of.*

A used words which imputed unchastity to

Held, (1) that the words constituted defamation not only of the wife of X, but also of X himself, and X was therefore entitled to maintain an action on his own account; (2) that the

Defamation.—(Continued).

words were actionable without proof of special damage. *Mukan Tall v. Bupal Tall*, 4 C.L.J. 398.

RAMPINI and WOODHORSE, JJ.

(2) *Libel—Slander—Cause of action—Special damage—Publication.*

A wrote letters to the husband of X, in which he alleged that X was a witch and that by her sorcery caused the death of some relations of A. A also made oral statements of a similar description to their castemen. X and her husband sued to recover damages for defamation:

Held, (1) that the husband of X had no cause of action as the imputation made was not defamatory of him (a).

(2) That X had a good cause of action as the imputation made tended to bring her into hatred, contempt or ridicule (b).

(3) That there was publication of the defamation. A communication to a husband or a wife of a charge against the wife or husband, constitutes a sufficient publication (c).

(4) That so far as the libel was concerned, no proof of special damage was necessary. The distinction between the actionable quality of oral and written words examined (d).

(5) That so far as the slander was concerned, no proof of special damage was necessary (e).

The earlier English authorities on the subject reviewed. *Shoobhagee Koori v. Bokhari Ram*, 4 C.L.J. 390.

RAMPINI and MOOKERJEE, JJ.

References:—(a) 2 C.L.J. 398, *Appl.* (b) 4 Mason, 115, *F.* (c) 55 Am. St. Rep. 224 and 20 N.J. Law 208, *F.*, 18 O.B. 836 and 1 T.L.B. 572, *Appl.*, 23 Am. St. Rep. 936, 12 Am. St. Rep. 76 and 20 Q. B. D. 635, *D.* (d) 23 Am. Rep. 408 and 27 Am. Dec. 271, *F.* (e) 26 C. 653, *D.* See, I, *Libel*, No. 1 and *Evidence Act*, No. 40.

Dekhan Agriculturists' Relief Act.

—See *ACT XVII OF 1879 (BOMBAY)*.

Delegation.

Powers of—Maxim "*Delegatus non potest delegare*"—See *ACT VIII OF 1890 (BENGAL COURT OF WARDS)*, No. 1, 3 C.L.J. 165.

Demolitions.

Suit for—of building—Necessary findings—See *EQUITABLE ESTOPPEL*, No. 1, A.W.N.(1906), 174.

Deposit.

See I, Civil Pro. Code, No. 197 and Mortgage (Redemption), No. 4.

Deposition.

See I, Evidence Act, No. 8 and Civil Pro. Code, 88.

Dhar-dhura.

Custom of—, suit by taluqdar for possession of land by reason of—*See ACT I OF 1863 (OUDH ESTATES), No. 1, 9 O. C. 129.*

Diluvion.

See, I, Regulation XI of 1825 (Dengal), 1.

Director.

See I, Company, No. 4.

Dispossession.

See I, Specific Relief Act, No. 1.

Discretion.

Tender of documentary evidence after closing case, but before opponent begins his case—Exercise of, *See EVIDENCE, No. 24, 33 C. 1925.*

District Municipalities Act (Madras).

See ACT IV OF 1884 (MADRAS).

Distress.

See I, Limitation Act, No. 49.

Division Court.

See I, Letters Patent, (Calcutta), No. 3.

Divorce.

Right of Burman Buddhist husband or wife to obtain, on surrendering of joint property—*See BUDDHIST LAW (DIVORCE), No. 1, U.B.R. (1905), 3.*

Divorce Act.

See ACT IV OF 1869.

Dobas.

Rights of fishery in—formed by the shifting of the course of a river—*See JALKAR RIGHT, No. 2, 33 C. 15.*

Documents.

(1) *Practice—admitting in evidence—Deciding the genuineness or otherwise of documents.*

Per Heaton, J.—Admitting in evidence is a mechanical and formal proceeding. When all the evidence is recorded and when it is all considered, it is in the judgment that the judge decides, whether a document is or is not genuine. Ambalal v. Pascal Seal, 8 Bom. L. R. 978.

AMBALAL BEAMON AND HEATON, 37.

Document.—(Continued).

(2) Non-delivery of—by executant to execute after registration, effect of—*See REGISTRATION, No. 3, 40 P. R. 1906.*

Domicile.

See, I, International Law, No. 1.

Drainage Act (Bengal).

See ACT VI OF 1880 (DRAINAGE).

Durmokuraidar.

See I, Civil Pro. Code, No. 197.

Easements.

(1) *Claim for possession of property—Plaintiff denying defendant's alleged right to easement—Burden of proof.*

Where in a suit for possession of property the defendant admits plaintiff's right to the property and claims to use it by right of easement, the burden of proving that the defendant had used the property for a period of over twenty years as of right lies on him, and not on the plaintiff. *Mir Mansab Ali v. Muhammad Akbar, 26 P.L.R. 1906.*

JOHNSTONE, J.

(2) *Obstruction of view to a shop—Removal of constructions.*

The defendants built a shed and put sarki screens on their own land in front of the plaintiff's shop, the view to which was obstructed on account of these constructions.

Held, that the plaintiff was not entitled to have the construction removed on the ground that the view to the shop was interrupted from the neighbouring road. Gopi Nath v. Mussamat Munno, 8 A.L.J. 637=A.W.N. (1906), 257.

BANERJI, J.

References.—35 L. J., Ch. 317 and L.R., 2 Ch. 158, R.

(3) *Light and air, right to passage of, 'disturbance to,' meaning of—See EASEMENTS ACT (V OF 1882), No. 3, 30 B. 319.*

(4) *Claim under, inconsistent with alternative claim as owner—See ALTERNATIVE CLAIMS, No. 2, 4 G. L. J. 437.*

See, further, I, cols. 397 to 402 and I, Easements Act, No. 1 Injunction, No. 15, & Limitation Act, No. 41 a.

Easements Act (V of 1882).

(1) *S. 4—right of privacy, interference with—Suit by occupier.*

Easements Act (Y of 1882).—(Continued).

A lessee or a person in lawful possession of a house may maintain an action if the right of privacy of the house, of which he is in possession, is interfered with. *Kundan v. Didi Chand*, 3 A. L. J. 670 = A. W. N. (1906), 288.

AIKMAN, J.

Reference:—10 A. 358 (887), commented on.

(3) S. 7.—Right of owner to protect his land against water flowing into it from a highway.—See ACT IV of 1884 (MUNICIPALITIES ACT, Madras), No. 1, 1. M. T. 383.

S. 7, A 1(j)—I, *Easements Act*, No. 1.

S. 13 e and f—I, " " No. 3.

Se. 28, 33, 51c—I, No. 4.

(3) S. 28 cl. (c)—*Easements as to light and air, injunction to prevent obstruction of—substantial damage, material interference with physical comfort—Physical comfort, meaning of.*

Plaintiffs sought an injunction and compensation alleging threatened disturbance (obstruction) by the defendant, of a prescriptive right to the access and use of light and air to and for a building on their property. *Held*, that, under S. 33, the plaintiff may institute a suit for compensation provided the disturbance of the easement has actually caused him substantial damage; and that plaintiff's contention that an injunction can be granted under S. 35 when the disturbance was only threatened or intended, even though there is no substantial damage, cannot be upheld; because, "disturbance" means illegal obstruction, for which, if done a suit will lie. This is something more than mere obstruction. Therefore a threat of mere obstruction (as in the plaintiff's case) is not a threat of disturbance (within S. 35) and no injunction can therefore be granted.

Held, further, the granting of an injunction being, at most, discretionary, if a suit to prevent the disturbance of an easement of light or air be grounded on nuisance, then S. 56 (g) of the Specific Relief Act affords a complete answer to the plaintiff's contention and a good reason for the Court's refusing the injunction in the exercise of its discretion.

Held, also, that, to establish substantial damage, plaintiffs must show material diminution in the value of their heritage or material interference with their physical comfort (S. 33 Explanation) and the expression *physical comfort* does not admit of precise definition, but is

Easements Act (Y of 1882).—(Concluded).

sufficiently exact, when applied as a test to a given state of things, to allow the ordinary reasonable man to arrive at a practical determination and, for the purpose of applying such test, one must look at the state of the plaintiff's property as it is, not as it was, or as it may be. *Ramji Shapurji v. Ramji Eulji*, 80 B. 319.

JENKINS, C.J. and BATTY, J.

(4) S. 60—*Landlord and tenant—Adverse possession—possession of site for over 19 years—License—revocation—House of a permanent character.*

The plaintiff was recorded zemindar of Daraganj. The *wajib-ul-ars* provided that the zemindar was entitled to *Dhik* (royalty), in case the house of any tenant was sold. Certain houses were attached and advertised for sale as the property of the defendant-judgment-debtor. The zemindar brought this suit for declaration of his right. It was found that, for 35 years, the judgment-debtor and his predecessors in title, who did not cultivate any land, were in possession of the houses and the site, and had never acknowledged the plaintiff's right, nor had paid him any rent. *Held*, that they acquired a title by prescription in the site as well as the houses, and their rights could be sold.

Per STANLEY, C. J.—If a license was granted by the Zemindars to the predecessors in title of the judgment-debtor, and they, acting upon that license, built a house, which was of a permanent character, the Zemindar could not revoke the license and seek possession of the site. *Bhadder v. Khair-ud-Din Husain*, 3 A. L. J. 760 = A. W. N. (1906), 305.

STANLEY, C. J. and RUSTOMJEE, J.

(5) S. 60 (b)—*License—Revocation—Work of a permanent character.*

A *katcha* thatched house may be "a work of a permanent character" within the meaning of S. 60 (b) of the Indian Easements Act, 1882, although the thatch of the house is renewed from time to time. *Nazir-ul-saman Khan v. Azim-ul-lah*, A. W. N. (1906), 216 = 3 A. L. J. 765 = 28 A. 741.

AIKMAN, J.

Reference.—8 East's Reports 308, R.

Ejectment.

(1) Suit in—Forfeiture of service tenure—Necessity for notice to quit—See SERVICE TENURE, No. 1, 3 C.L.J. 274.

Ejectment.—(Concluded).

(3) Creation by occupancy riyat of a girby (usufructuary) mortgage on his non-transferable holding, without the landlord's permission—Right of landlord to eject—See ACT VIII OF 1885 (BENGAL RENT), No. 1, 3 C.L.J. 222.

(3) Landlord's purchase of occupancy right—His right to eject an under-riyat without notice to quit—See ACT VIII OF 1885 (BENGAL), No. 12, 3 C.L.J. 155.

(4) Sale by occupancy riyat of his right to a third person—Right of landlord to eject—See ACT VIII OF 1885 (BENGAL TENANCY), No. 80, 3 C.L.J. 848.

(b) Liability to—Effect of acquisition of right of occupancy over a portion of holding—See LANDLORD and TENANT, No. 7, 33 C. 450.

(6) Admissibility in evidence, in suit for—of an unregistered *amalnama*, not forming lease or agreement to lease—See REGISTRATION ACT (III OF 1877), No. 2, 33 C. 502.

(7) Vendor and Vendee—Sale for more than Rs. 100—Vendee put in possession on payment of purchase-money but without a registered deed of sale—Suit by vendor in—Vendee's right to set up equitable plea—See TRANSFER OF PROPERTY ACT, No. 31, 1 M.L.T. 158.

(8) Transfer by tenant of non-transferable holding—Right of landlord to eject the transferee—See LANDLORD and TENANT, No. 14, 10 C.W.N. 1038.

(9) Houses occupied by tenants as appurtenant to their holdings for more than twelve years—Adverse possession—See LANDLORD and TENANT, No. 11, 3 A.L.J. 619.

(10) Effect of notice of, given to tenants claiming under-proprietary right—See POSSESSION, No. 6, 9 O.C. 292.

(11) Suit for, necessity in, of proof of plaintiff's title—See POSSESSION, No. 7, 9 O.U. 301.

(12)—for non-payment of rent, contract by permanent tenure-holder for liability to, illegality of—See ACT VIII OF 1885 (BENGAL TENANCY), No. 26, 4 C.L.J. 521.

(13) Right to sue under-tenants in, without previous notice to quit—See SERVICE TENURE, No. 3, 11 C.W.N. 46.

See, also, *I, Landlord and Tenant*, No. 22;
Joint property, No. 2.

Ejectment Suit.

I, Landlord and Tenant, No. 17 and *I*, 208.

Election (Municipal).

(1) Omission of a candidate's name from the candidates' list prepared by the Receiving Officer—Suit for declaration and injunction, maintainability of—See MUNICIPALITIES ACT, No. 15, 8 Bom. L.R. 206.

(2) Defendant refusing to receive nomination papers—See EJECT OF SUIT, No. 3, 8 Bom.L.R. 898.

See, also *I, Estoppel*, No. 3.

Encroachment.

See *Rev. Recovery Act (Madras)*, No. 1.

Endowed property.

See *I, Hindu Law (Religious Matters)*, No. 1 and *Limitation Act*, No. 8.

Endowment.

See *I, Hindu Law (Religious Matters)*, No. 5; *Hindu Law (Will)*, No. 5 & *Limitation Act*, No. 8.

Enfranchisement.

See *I, Hindu Law (Alienation)*, No. 6.

English Law.

Principles of—relating to an executor *de son tort* how far applicable to Hindus—See ADMINISTRATION, No. 1. 10 C.W.N. 566.

See, *I, Hindu Law (Will)*, No. 3.

Enhancement of rent.

Conversion of money rent into rent in produce, whether an—See ACT VIII OF 1885 (BENGAL TENANCY), No. 18, 33 C. 200.

See, also, *I, Landlord Tenant*, No. 3.

Equitable claim.

See *I, Civ. Pro. Code*, No. 184.

Equitable Estoppel.

(1) *Suit for demolition—Necessary finding—Principles applicable.*

Where a plaintiff sued to recover possession of land by removal of constructions made thereon by the defendant: *Held*, that it was not sufficient to debar the plaintiff from success, that he merely sat still and allowed the construction to come into existence. There should be a distinct finding, first, whether they were twelve years old, and, if not, then, whether the plaintiffs are equitably estopped on the principles laid down in *Naunkhai Bhagat v. Hameshar Bhagat* and *Chhotu v. Iwayat-ul-lah*. *Nauba Baksh v. Nura Hak*, A. W. N. (1906), 174.

ATKIN, J.

Equitable Estoppel—(Concluded):

References.—14 A. 828 and A. W. N. (1899), 191, B.

Equitable mortgage.

See I, Transfer of Property Act, No. 18.

Equitable Plea.

Vendor's suit to eject vendee—Latter's right to set up equitable plea—See TRANSFER OF PROPERTY ACT, No. 31, 1 M. L. T. 153.

Equitable Relief.

See, I, 407.

Equitable Set off.

See, I, Civ. Pro. Code, No 86 and Mortgage (Redemption), No. 30.

Equity.

(1) Where there is a subsisting charge on certain property paid off by the person in possession, it is equitable that when the plaintiff reclaims the estate, credit should be given to that person for the payment of the mortgage which the plaintiff would have had to meet. *Ashidai v. Abdulla Haji Mahomed*, 8 Bom. L. R. 652.

CHANDAVARKAR, J

References.—2 I. A. 7, 1893 P. J. 30 and 1894, P. J. 39, F.

(2) *Payment—Benefit enjoyed by another—Liability of person benefited.*

It is consistent with general principles of equity, that those whose funds are used to meet the legitimate demands of others, when the latter have the benefit of such payments, are entitled to ask the latter to pay to the extent of the benefit, they cannot retain the benefit and plead non-liability. Where the codified law does not cover the case, the Court should, apply the general law, legal and equitable, *Chandra Sekhar Kar v. Nafar Chandra Kundu*, 4 C. L. J. 555.

MISRA AND GRIDY, JJ.

See, also, I, Contract, No. 10.

Estate Partition Act.

See Act VIII of 1876 (Bengal).

See, also, I, 409.

Estoppel.

(1) *Pleadings as to invalidity of a mortgage—Subsequent inconsistent pleadings—Estoppel.*

A plaintiff, who had set up in his plaint that a certain mortgage was invalid, would be estop-

Estoppel—(Continued).

ped from subsequently relying on such mortgage as valid, so as to be able to save his suit from bar of limitation by establishing that the prescriptive rights acquired by the defendant was the right of a mortgagee under that mortgage and not the right of a full owner based on possession under a sale by the plaintiff's father. *Laksmi Nachiar v. Ramachandra Dorai*, 16 M. L. J. 5.

WHITE, C.J. and SUBRAMANYA Aiyar, J.

Reference.—25 M. 507 at p. 511, R.

(3) *Rule of—Evidence Act (I of 1872), S. 115—Arrangement, carried out and acted upon, and when binding.*

In determining whether an estoppel has been created, the main question is whether the representation has caused the person, to whom it has been made, to act on the faith of it. The existence of estoppel does not depend on the motive or the knowledge of the matter, on the part of the person making the representation. It is not essential that the intention of the person, whose declaration, act or omission has induced another to act or to abstain from acting, should have been fraudulent, or that he should not have been under a mistake or misapprehension. *Helan Das v. Durga Das Mundal*, 4 C. L. J. 323.

RAMPINI and MOOREJEE, JJ.

Reference.—19 I. A. 208—20 C. 206, R.

(8) Holder of negotiable instrument giving it to another with authority to raise money for his own purposes. *See NEGOTIABLE INSTRUMENTS, No. 1, 8 Bom. L. R. 921*

(4) *See MORTGAGE (GENERAL), No. 5, 28 P. L. R. 1906.*

(5) Taking active interest in partnership business and holding one's self out as partner to strangers how far an—*See CONTRACT ACT, No. 48, 10 C. W. N. 313.*

(6) Oath taken under the Indian Oaths Act by one party how far operates as—on the other party in subsequent proceedings—*See ACT X OF 1878 (OATHS), No. 4, 10 C. W. N. 501.*

(7) When attestation of a sale-deed operates as—*See EVIDENCE, No. 1, 2 N. L. R. 84.*

(8) Mortgage by manager of a joint estate—effect of the appointment being subsequently declared illegal—Acquiescence of major co-shares—Subsequent attempt at repudiation—*See MORTGAGE (GENERAL), No. 8, 8 C. L. J. 537.*

Estoppel.—(Continued).

(9) Father and son governed by Dayabhaga School of Hindu Law—Improvement of family house by son out of his own earnings at the request of father—Father not estopped, on that account, from ejecting son from the house and obtaining injunction—See HINDU LAW (DAYABHAGA), No. 1, 10 C.W.N. 765.

(10) Beneficial owner not precluded from showing the real nature of a *be napti* transaction, when the fraudulent object is not carried into effect—See BENAMI TRANSACTIONS, No. 2, 10 C.W.N. 650.

(11) Right of defendant in a suit objecting to the maintenance of a suit on the ground that the plaintiff ought to proceed under S. 244, Civ. Pro. Code, to object in execution that a suit was the appropriate remedy—See CIV. PRO. CODE, No. 128, 3 A.L.J. 456.

(12) Rule of—, a discussion of—See EVIDENCE ACT, No. 86, 10 C.W.N. 747.

(13)—against person accepting the office of executor under, and obtaining probate of, a will from impeaching the same—See WILL, No. 5, 1 M.L.T. 71.

(14) Admission on a point of law, whether operates as—See TRANSFER OF PROPERTY ACT, No. 19, A.W.N. (1906), 182.

(15) Right of transferee of tenant to question landlord's title.—See LANDLORD and TENANT, No. 19, 16 M. L. J. 351.

(16) Heirs entering upon possession of property as *wakf* not barred by, from disputing the validity of the *wakf*—See EVIDENCE ACT, No. 31, 4 C.L.J. 442.

(17)—of defendant in regular suit on disallowance of claim under S. 278, Civ. Pro. Code, from pleading bar under S. 244—See CIV. PRO. CODE, No. 122, 11 C.W.N. 145.

(18) Mahomedan will—Grant of probate—Creation of estoppel as against heirs—Claim of heirs as against beneficiary under will—See MAHOMEDAN LAW (WILL), No. 2, 9 C.W.N. 938.

(19) Title of purchaser by estoppel of vendor—Transfer of Property Act, S. 41—Evidence Act, S. 115.

The principle of estoppel embodied in S. 41 of the Transfer of Property Act, which is substantially the same as that in S. 115 of the Evidence Act, implies a wilful misleading of the purchaser, by some breach of duty on the part of the owner, but mere acquiescence, on the latter's part

Estoppel.—(Concluded).

cannot create such estoppel. *Yaithianatha Aiyar Ramaswamy Aiyar v. Kanaku Kuttalanathan Yelayudhan*, 21 T.L.R. 296.

GOVINDA PILLAY, HURT and PUDMANABA AIYAR, JJ.

See, also, *Benami Transactions*, No. 1; *Hill Tracts*, No. 1; *Hindu Law (Joint Family)*, No. 1; *Landlord and Tenant*, Nos. 19, 22, 45 and 53; *Minor and guardian*, No. 3; *Mortgage (Construction)*, No. 1; *Pre-emption*, No. 23; *Punjab Laws Act (IV of 1872)*; No. 1.

Revenue Recovery Act, (Madras), No. 2, *Specific Performance*, No. 1, *Transfer of Property Act*, No. 30, *Trusts Act (II of 1889)*, No. 1 and *Evidence Act*, No. 36.

Evidence.

(1) Register of baptism, statement of date of birth in a, how far evidence of age—Attestation of sale-deed, when operates as estoppel.

A register of baptism, while evidence of that fact and of the date of it, furnishes, even if it states the date of a person's birth, no proof of the age of that person further than that, at the date of such ceremony, the person referred to was already born. Evidence regarding the date of a man's birth has been held under certain circumstances to be admissible under S. 82 (5) of the Evidence Act (a); but, in the case of an entry in the register in question, there is nothing to show by whom the statement entered was made, much less that the person making the statement had any special means of knowledge.

Mere attestation of a sale-deed cannot always be held to work an estoppel; the principle on which the law rests is that it would be most inequitable and unjust to a person that if another by a representation made, or by conduct amounting to a representation, has induced such person to act as he would not otherwise have done, the person who made the representation should be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted under it. Unless therefore, the representation of the party to be estopped has been really acted upon, the other party acting differently from the way in which he would otherwise have acted, no estoppel arises. The person deceived must not only

Evidence.—(Concluded)

believe the thing to be true, but he must also act upon such belief, so as to alter his own previous position and where there has been no such belief, and no such action, there can be no estoppel (*b*). **Mr. Collier v. Mrs. L. Baron**, 2 N. L. R. 84.

ISMAI, J. G.

Referrances.—(a) 25 M. 189, R. (b) 4 C. W. N. 268 and 21 A. 316, F.

(2) *Rate of rent—Decree by a co-sharer landlord, if—*

A decree by a co-sharer landlord is not admissible as evidence as to the rate of rent in a suit brought by another co-sharer. **Abdul Ali v. Raj Chandra Das**, 10 C.W.N. 1084.

GHOSE, C.J., and CASPENSZ, J.

(3) *Proof of date of birth after lapse of years—Reasonable conviction—Pleading—Decision of Appellate Court on suggestion as to matter of fact by pleader—Propriety.*

In India it is difficult to prove such facts as the date of birth after the lapse of many years, and it would be unreasonable to demand such a class of evidence as would justly be demanded in England. But the evidence must be such as to carry reasonable conviction to the mind

Where an Appellate Court reversed the decision of the lower Court on the basis of a suggestion on a matter of fact made for the first time by the appellant's pleader, but as to which no evidence had been taken.

Held, by the Judicial Committee, that it is very dangerous to adopt a conclusion in a Court of Appeal merely on the suggestion of a legal gentleman representing one of the parties. **Nawab Shah Ara Begam v. Nanhi Begam**, 11 C.W.N. 180 (P.C.)=1 M.L.T. 429.

LORD MACNAGHTEN, LORD ATKINSON, SIR ARTHUR WILSON & SIR ALFRED WILLS.

(4) Proceedings of the Circuit Committee of 1786 is good—in matters relating to rights of Government with respect to Zemindari property—See **SERVICE TENURE**, No. 2, 3 C. L. J. 1 (P.C.)

(5) Rent receipts how far—of sub-division of tenancy under S. 88 of Bengal Tenancy Act—See **ACT VIII OF 1885 (BENGAL TENANCY)**, No. 31, 10 C. W. N. 216.

(6) Entry of a person's name at the last revision of settlement is conclusive—of his fixed rate tenancy—See **ACT II OF 1901 (NORTH WEST PROVINCES)**, No. 3, A. W. N. (1906), 68.

Evidence.—(Continued).

(7) Suit on oral agreement embodied in an unstamped Pro-note—admission by defendant—See **STAMP ACT (II OF 1899)**, No. 6, 66 P. R. 1906.

(8) In cases of malicious prosecution want of reasonable and probable cause for the prosecution is some—of malice—See **MALICIOUS PROSECUTION**, No. 1, 10 C.W.N. 253.

(9) Maintenance of near agnatic relations in lieu of their services and payment of their marriage expenses, not necessarily evidence of non-division from them—See **HINDU LAW (PARTITION)**, No. 1, 10 C.W.N. 338.

(10)—relating to attestation of mortgage-deed—Burden of proof—Applicability of maxim *Omnia rite esse acta*—See **TRANSFER OF PROPERTY ACT**, No. 42, 2 N.L.R. 10.

(11) Admissibility of—as to reputation of identifiers of an executant of a will before Registrar—See **REGISTRATION**, No. 2, 3 C.L.J. 349.

(12)—as to due execution and registration of a will—Presumption as to official acts duly performed—See **REGISTRATION**, No. 2, 33 C. 537=3 C.L.J. 349.

(13)—of maps—See **ACCRETION**, No. 1, 3 C. L.J. 560.

(14) Admissibility in—of unregistered compromise relating to land addressed to Court and judicially acted upon—See **REGISTRATION ACT**, No. 7, 27 P. R. 1906.

(15) Oath taken in a previous proceeding how far—in a subsequent proceeding—See **ACT X OF 1873 (OATHS)**, No. 4, 83 C. 386.

(16) Admissibility in—, in suit for ejectment of an unregistered *amaluana* not forming lease or agreement to lease—See **REGISTRATION ACT (III OF 1877)**, No. 2, 33 C. 502.

(17) Entry in account book—Suit on acknowledgment—See **ACKNOWLEDGMENT**, No. 4, A. W. N. (1906), 185.

(18)—of experts or men in the trade, whether can be given to show whether or not a combination of marks is such as is calculated to deceive the purchaser—See **TRADE-MARK**, No. 2, 4 C. L. J. 268.

(19) Award of arbitrators inadmissible for want of registration—secondary evidence of award, whether admissible—See **REGISTRATION ACT (III OF 1877)**, No. 13, 71 P. R. 1906.

(20) Admissibility in—of compulsorily registrable but unregistered partition-deed relating

Evidence.—(Concluded)

both to movables and immovables, so far as regards the—movables—See Registration Act (III of 1877), No 15, 119 P. L. R. 1906.

(21) Oral, inadmissibility of, to show that a debt bond was an assignment of future rent—See Evidence Act, No. 18, 4 C. L. J. 402.

(22) Admitting in evidence—Deciding the genuineness or otherwise of documents—See DOCUMENTS, No. 1, 8 Bom. L. R. 973

(23) Admissibility in evidence of compulsorily registrable unregistered document for collateral purpose—See CUSTOMS (PUNJAB), No. 68, 143 P. L. R. 1906.

(24) Tender of documentary evidence after closing case, but before the opposite party begins his case—*Future of judicial discretion*

Where plaintiff tendered in evidence a judgment of the year 1896 in the Persian language, which was filed with the plaint, after he had closed his case, but before the defendant began his case, a Court, although it would be technically right in refusing to receive this judgment in evidence as "too late", it would not be exercising a sound judicial discretion in so doing. *Baroda Prasad Chatterjee v. Madhab Chandra Ghose*, 38 C 1945

GHOSH, O. J., AND CASPERSEY, J.

(25) Consent of parties to have—taken in a particular way does not oust jurisdiction of Court—See PRACTICE (MIS. CASES), No 3, 7 Bom. L. R. 642

See, also, *I, Burmese Law (Kistnaadoption) I, Act XI of 1859 (Bengal), Nos 8 and 5.*

Act I of 1895 (Bengal), No 2.

Act XXVI of 1881 Nos 1 and 4 Adverse possession, No 1.

Civil Pro Code, Nos 93 and 237.

Custom, No 5

Execution of Decree, No 84.

Evidence Act, No. 8.

Hindu Law (Impartible Estates), No 2. Lease, No. 7.

Legal Practitioners' Act (XVIII of 1879), No 2.

Muhammadan Law (Legitimacy), No 1.

Pre-emption, No 5

Registration, No 5.

Evidence Act (I of 1872).

Sec. 2, 11, 116—*I, 412.*

Evidence Act (I of 1872).

(1) S. 4.—The expression "Conclusive proof" in S. 11 of the Oaths Act, 1878, is to be understood as defined by—See ACT X of 1878 (OATHS), No 8, 8 Bom. L. R. 19.

(2) S. 4.—Record of plaintiff's name as a co-sharer—presumption—See ACT II of 1901 (AGRA TENANCY), No 29, A. W. N. (1906), 315.

Sec 11-13-43—*I, 418.*

(3) S. 18—Recitals of pleadings in judgments—Admissibility of such judgments in evidence—Evidence of instances—See MAINTENANCE GRANT, No. 1, 3 C. L. J. 521.

S. 18 (b)—*I, 415.*

S. 22 (3)—*I, 415.*

Sec 22 (cls 4 and 5), 35 and 57,—*I, Custom No 6.*

S. 22 (5)—*I, 416.*

S. 23—*I, 416.*

S. 24—*I, 416*

(4) S. 35, relevancy under, of entries in settlement records

Settlement records are made by settlement officers in accordance with the directions to them, which are executive instructions. So, entries of mortgages made in them, in the course of official duty, are merely a piece of evidence relevant under S 35 of the Act, the weight and probative value to be given to them being a matter to be decided by the Court. *Held*, also, that, where one person allowed another to hold himself out as the owner and to register himself as such in the settlement records, such conduct could not estop the former from subsequently setting up his rights against the latter. *Mi Na U v. Nga Pyan*, U. B. R (1906), Evidence. 3.

SHAW, J. C.

References.—2 L. B. B. 56 & U. B. R. (1892-96), 379, B.

(5) S. 35—Judgments—Recitals of pleadings—admissibility in evidence of judgments containing recitals of pleadings—See MAINTENANCE GRANT, No. 1, 3 C. L. J. 521.

(6) S. 35—Entries in *Waqf-ul-aw* of a *yal* ago, admissibility in evidence of, as proof of family custom of inheritance—See HINDU LAW (ADOPTION), No. 8, 3 A. L. J. 415.

Evidence Act (I of 1872).—(Continued).

- (7) S. 44—*Rent for rent by administration*—*Tenant's plea that letters of administration were obtained by misrepresentation, if untenable—Fraud.*

Plaintiff having obtained letters of administration to the estate of a deceased landlord sued a tenant for rent. The latter in his written statement objected that the letters of administration had been obtained upon a misrepresentation by the plaintiff as to his relationship with the intestate;

Held, that assuming that the letters of administration could be regarded as an order within the meaning of S. 44 of the Evidence Act, the allegations of the defendant were not such as would entitle him to go into evidence for the purpose of proving that the letters of administration were invalid in law.

That such a defence could not be successfully raised so long as the letters of administration were not revoked by a competent Court.

Payment of rent to the plaintiff by the defendant would afford the latter full indemnity against the claim of any other party (a). *Ambika Charan Das v Kala Chandra Das*, 10 C. W. N. 422.

GHOSE and HOLMWOOD, JJ.

References.—(a) 27 C. 11 and 6 C. W. N. 787, *Distl*.

See, also, I, 417.

S. 49—I, 417.

S. 63—I, *Forest Lands*, No. 1.

S. 64—I, 417.

S. 65—I, *Trade-mark*, No. 2.

S. 74—I, *Mahomedan Law (Legitimacy)*, No. 2.

- (8) Ss. 85 and 114—*Presumption of identity*—*Power-of-attorney executed before, and authenticated by a Notary Public—Necessity for affidavit of indemnity.*

Where an application is made, for letters of administration with a copy of the will of the deceased annexed, by an agent of the executor under the will, under a power-of-attorney duly executed by the executor before, and authenticated by a Notary Public and attested by witnesses, there is no necessity, for an affidavit of identity, S. 85 of the Act being mandatory and S. 114 raising a presumption in favour of the identity, of the executant of the power-of-attorney. *Wylne, In the goods of*, 23 C. 625.

MACLEAN, C.J. and HARRINGTON, J.

Evidence Act (I of 1872).—(Continued).

- (9) S. 90—

Although a person appointed manager by the Court, of the property of an insane person, ought to restore a document, in his possession as such manager to the proprietor, when he is removed from the management, his failure to do so does not, having regard to the explanation to S. 90, make the custody of the document improper within the meaning of the Evidence Act. *Shyama Charan Wandy v. Abhiram Gokrami*, 3 C.L.J. 306=10 C.W.N., 788=28 C. 511.

MACLEAN, C.J. and CHIT, J.

S. 90—I, 418.

- (10) S. 91—*Admissibility of evidence of fact that enhancement was agreed to be paid in consideration of improvement—See Act VIII of 1885 (BENGAL TENANCY) No. 17, 35 C. 607.*

- (11) S. 91—*Kabuliat without lease—Admissibility of oral evidence to prove agreement to execute lease—See TRANSFER OF PROPERTY Act, No. 111, 9 O.C. 296.*

See, also, I, 418.

- (12) S. 92—*Written document—Contemporaneous oral agreement—Equitable principles.*

Where a written document is alleged to be governed by a contemporaneous oral agreement or statement of intention, which must be inferred from the surrounding circumstances, the Court must be guided by S. 92 (a); and the Court cannot have recourse to those equitable principles which enable the Court of Chancery to give relief in those cases of which (1858) 3 De G. and J. 98 and (1859) 4 De G. and J. 16 are examples. *Datto Valad Totaram v. Ramchandra Totaram*, 7 Bom. L.R. 689=30 B. 119.

JENKINS, C.J. and BATTY, J.

References.—(a) 23 A. 149=27 I. A. 56=2 Bom. L.R. 523, *Refd. to*.

- (13) S. 92—*Oral evidence, admissibility of, to interpret clear terms of a bond.*

When the terms of a bond are clear and unambiguous, parol evidence is not admissible to show that it was an assignment of future rent. *Hriday Nath Poddar v. Joyram Mahto*, 4 C.L.J. 402.

MOOKERJEE, J.

- (14) S. 92—*Executants of bond as principals, not competent to adduce oral evidence of their being mere sureties.*

Evidence Act (I of 1872).—(Continued).

This was a suit for the balance due under a mortgage deed. Some of the defendants pleaded that they were only sureties and that they were discharged by the transaction between the borrowers and the lender transferring the mortgaged land and bullocks, a transaction of which they had no knowledge. *Held*, that, under S. 92 of the Act, it was not competent for the above defendants as executants of the deed, in their capacity of principal debtors, to let in oral evidence to the effect that they executed the deed as sureties merely. *Nga Saing v. Nga Lu Aung*, U.B.R. (1900), Evidence, 18.

SHAW, J. C.

References:—10 A. 421, 25 A. 387, 3 C. 174 and 8 C.W.N. 101, R.

(15) S. 92—Collateral agreement as to interest on a *Hundi*, admissibility of evidence as to under—See ACT XXVI OF 1891 (NEGOTIABLE INSTRUMENT) No. 12, 11 C. W. N. 105.

(16) S. 92—Question whether a sale deed was a deed of gift—Admissibility of evidence as to intention of parties—See *BENAMI TRANSACTIONS*, No. 8. 10 C. W. N. 570.

(17) S. 92—Document, construction of—Oral evidence to ascertain the intention of parties in passing a document—Fraud—Want of failure of consideration.

Ordinarily, oral evidence is not admissible for the purpose of ascertaining the intention of the parties in interpreting language used in a written document, which is clear and unambiguous. Unless the Court is able to assume some oral agreement, it would be impossible to regard the contemporaneous or subsequent conduct of the party, as in itself evidence to establish the intention of the parties at the time of the execution of the document. Such extraneous intrinsic evidence would necessarily be of value, only as a ground for inferring an oral agreement, whereof evidence is excluded by S. 92 of the Act.

The fraud, which under proviso 1 of S. 92 may be proved, must be fraud which would in validate the document, and, therefore, subsequent fraud in respect of the document, not such as to invalidate it, could not be a ground for admitting extraneous oral evidence under proviso 1 of S. 92.

The real effect of admitting such evidence would not be to prove fraud in the execution of the document, but the existence of a different intention than that which

Evidence Act (I of 1872).—(Continued).

appears on the document itself. In other words it would be an attempt to prove a different contract from that expressed in the document, without proving any fraud in the preparation of the document which would invalidate it.

The "want or failure of consideration" contemplated by the proviso 1 to S. 92 is a complete want or failure of consideration.

Proviso 8 to S. 92 does not cover facts which are intended to show that the language of the document meant the exact opposite of what it purports to mean. There is no necessity for the explanation of the language used in relation to existing facts. The only object or use of such evidence, if admitted, would be to show that the language was intended to mean something which is utterly incapable of being expressed by that language. *Keshavarao Bhagwant v. Ray Pandu*, 8 Bom. L.R. 287.

RUSSELL and BATTY, JJ.

(18) S. 92—Oral evidence varying the terms of a deed—Intention of parties cannot be such evidence—Sale—Exchange—Limitation Act (XV of 1877), Art. 97—Money paid upon an existing consideration which afterwards fails.

On the 17th April, 1892, the defendants passed a sale deed of certain lands at Gadag to plaintiff for Rs. 500. On the same day, the plaintiff sold some lands at Toppinkatti to the defendant's sister for Rs. 500. No money passed under any of these transactions, the one being a consideration for the other. In 1898, the plaintiffs were dispossessed by a person deriving title from a purchaser, at a court sale on the 6th June, 1885, of Gadag lands in execution of a decree against the defendants, who had somehow remained in possession. The plaintiff, thereupon, filed a suit against the defendants to recover the possession of the lands at Toppinkatti, or in the alternative for compensation for the loss sustained by him by reason of his dispossession:—

Held (1) that the two deeds professed to be deeds of conveyance; and the mere fact that they were mutual deeds of conveyance would not make the transaction an exchange. Whatever might have been the intention of the parties having regard to S. 92 of the Evidence Act, it was impossible to treat the transaction of 1892 as one for exchange.

Evidence Act (I of 1872).—(Continued).

(2) That the plaintiff was entitled to recover money paid upon an existing consideration which afterwards failed: Art. 97 of the Limitation Act, 1877: **Hanmant Narsinha v. Govind Pandurang Khatat**, 8 Bom. L. R. 288.

JENKINS, C. J. and ASTON, J.

Reference.—18 M. 178, F.

(19) S. 92—A registered instrument of mortgage takes effect against any oral agreement relating to the hypothecated property, and no parol agreement which purports to modify the terms of the contract of mortgage by reducing the amount recoverable thereunder, by taking away the right of sale, and by providing for the payment of the reduced debt by a sale, of other property, can be proved, in view of the provisions of S. 92 of the Act. **Maharaj Singh v. Raja Balwant Singh**, 8 A.L.J. 274=A.W. N. (1906), 117=28 A. 506.

STANLEY, C.J., and BURKITT, J.

(20) S. 92—*Construction of document—Mortgage—Sale—Real agreement between parties whether embodied in document or not.*

The plaintiff sued to redeem his land alleging that his lands were mortgaged with the defendants under a nominal sale-deed. The lower appellate Court treating the contract as embodied in the deed as one of sale rejected the suit:—

Held, that the question involved was not whether the document was one of sale or mortgage, but whether the real agreement between the parties was embodied in the document. **Ansa-Tuka v. Kenchappa Satappa**, 8 Bom. L.R. 669.

RUSSELL and ASTON, JJ.

(21) S. 92—*Written document—Oral evidence for construing the document—Oral evidence permissible to how that contract was obtained fraudulently—Dakshin Agriculturists Relief Act (XVII of 1879).*

Evidence of intention cannot be given for the purpose merely of construing a document. And S. 92 of the Act, subject to the proviso therein contained, forbids evidence to be given of any oral agreement or statement for the purpose of contradicting, varying, adding to, or subtracting from the terms of any contract, grant or other disposition of property the terms of which have been reduced to writing as mentioned in that section.

Evidence Act (I of 1872).—(Continued).

While there are restrictions on the admissibility of oral evidence referred to above, S. 92 in its first proviso recognizes that facts may be proved by oral evidence which would invalidate document or entitle any person to any decree or order relating thereto. And where one party induces the other to contract on the faith of representations made to him, any one of which is untrue, the whole contract is in a Court of Equity considered as having been obtained fraudulently.

Per JENKINS, C.J., "The frequency of the complaint, that agriculturists are entrapped into the execution of documents of sale in the belief that the right to redeem still remains with them, leads us to express the hope that there may be early legislation which will enable the Courts, at least where an agriculturist is concerned, to investigate and determine the real nature of the transaction, unfettered by S. 92 of the Act and to award such relief as the justice of the case may require." **Abaji Annaji v. Luxman Tukaram**, 8 Bom. L.R. 558=30 B. 426.

JENKINS, C.J., and BEAMAN, J.

References.—22 A. 149, 2 Bom. L.R. 522 7 Bom. L.R. 669, 28 M. 7 and 17 C. 291 (297) (P. C.), R.

See, also, I, 418 to 421 and *Easements Act* Nos. 2 and 3.

(22) Ss. 92, 99—*Suit for recovery of haq-i-chaharum—Sale alleged to be disguised as a usufructuary mortgage—Admissibility of evidence.*

The plaintiff sued to recover one-fourth of the price of a house alleged to have been sold by the first defendant to the second defendant, the claim being based upon a local custom. The transaction between the defendants was ostensibly not a sale but a usufructuary mortgage. *Held*, that the plaintiff, not being a party to the transaction was entitled to give evidence to show that what purported to be a usufructuary mortgage was not in reality such, but was in fact a sale. **Bageshri Dayal v. Pancho**, A. W. N. (1906), 89=3 A.L.J. 314=28 A. 473.

BANERJI, J.

References.—28 C. 70, *Diss.* 2 C.L.J. 338 and 27 M. 329, F.

Ss. 92 and 99—I, 421.

Evidence Act (I of 1872).—(Continued).

Sec. 22 (6) and 28—*I, Mortgage (Construction).*
No. 14.

(23) **Sec. 22 and 115—Written instrument—Sale deed or mortgage—Representation that a sale-deed would not be enforced as a sale deed—Effect of—See MORTGAGE (GENERAL), No. 20, 6 Bom. L.R. 761.**

(24) **S. 22, proviso 1—Evidence to prove mistake in agreement admissibility of, in a suit upon the agreement.**

Under proviso 1 to S. 22 of the Act, evidence may be admitted to prove that there was mutual mistake in the wording in an agreement and to prove what the real intention of the parties was, and such evidence as to the alleged mistake may be given not only in a suit for the rectification of the mistake, brought under S. 31 of the Specific Relief Act, but also, in a suit based upon the agreement itself. **S. Narayanaswamy v. James D. Rodrigues, 8 L.R.B. 227.**

HARTNOLL, J.

References:—2 C.W.N. 280, F. 22 A. 149 & 11 Bur.L.R. 281, R.

(25) **S. 28—See No. 22, *supra*.**

S. 108—I, 422.

(26) **S. 108—Presumption of death—Burden of proof.**

Section 108 of the Indian Evidence Act, 1872, according to its terms, does not require that the Court should hold the person dead at the expiration of the seven years therein indicated, but merely provides that the burden of proving that he is alive at the time of the suit is shifted to the person who affirms it. **Narayan Bhagwan v. Srinivas Trimbak, 6 Bom.L.R. 226.**

JENKINS, C.J. and BATTY, J.

(27) **S. 108—Presumption of death of missing person—Onus probandi—See MAHMOEDAN LAW (SUCCESSION), No 1, 2 C.L.J. 286 (P.G.)**

(28) **S. 115—Suit based on title—Burden of proof as to wrongful dispossession.**

The word 'possession contemplated by S. 110 of the Act is to be understood as opposed to juridical possession and to denote actual present possession and where, in suit for possession based upon title, there is also the allegation of wrongful possession obtained by the defendant, the burden of proof of the dispossession lies in the first instance on the plaintiff. But, on proof of his previous possession and dispossession by defen-

Evidence Act (I of 1872).—(Continued).

dant and of his previous lawful possession on his own account, the burden of proof will be shifted to the defendant to prove title in himself and his right to oust the plaintiff. **Mi Eia Ma v. Nga La, U.B.R. (1905), Evidence, 7.**

SHAW, J.C.

References:—30 W.R. 455, 7 L.A. 78, 5 C.L.R. 278, 13 A. 43, 25 B. 287, 20 Q. 334, 22 M. 179 & U.B.R. (1907-01), 421, R.

(29) **S. 112—Presumption as to legitimacy of child born during coverture—Proof of mother's living with a person other than her husband rebuts the presumption—Liability of such person to maintain his illegitimate children.**

There is, of course, a presumption that children born of a married woman during the lifetime of her husband are the legitimate offspring of that woman and her husband but this is, after all, a mere presumption, and as such, rebuttable. So, where such a woman had admittedly lived for years together with another person and they both had admitted and asserted such children to have been born of them, *held*, the above presumption must be regarded as having been completely rebutted and the children being the illegitimate sons of such other person, he was bound to maintain them; and persons, therefore, who have come into possession of his properties on his death, are liable to give the children maintenance to the extent of the property that has so come into their hands. **Bahadur Singh v. , 28 P.R. 1906.**

ROBERTSON and RATTIGAN, JJ.

See, also I, 422.

(30) **S. 114—See No. 8, *supra*.**

See, also, I, Chauhidari Chakran Land, No. 2.

(31) **Ss. 115, 116, 117—Estoppel—Heir entering on Waki property.**

Some of the heirs of a deceased person who entered upon possession of the property as valid wakis are not, as against the remaining heirs, barred by the rule of estoppel from disputing the validity of the waki. **Alamgir Khan v. Kamarunnessa Khanum, 4 C.L.J. 424.**

GHOSE and GHOSH, JJ.

Reference:—9 C.B. 48, *Supra*, and *Dicta*.

Partiance Act (I of 1872).—(Continued).

(33) S. 115—Selling active interest in partnership business and holding estate partner to strangers how far constitute estoppel under Fraud or negligence whether essential—See CONTRACT Act, No. 46, 10 C.W.N. 318.

(33) S. 115—See TRANSFER OF PROPERTY Act, No. 19, A.W.N. (1906), 183 and No. 28, *supra*.

(34) S. 115—See ESTOPPEL No. 2, 4 C. L. J. 328.

See, also, *J. Landlord and Tenant*, No. 18, *HILL TRUSTS*, No. 1; *Punjab Laws Act (IV of 1872)*, No. 1.

(35) S. 116—Suit for rent—Defendant's tenant pleads that the landlord was only a benamidar—*Estoppel*

In a suit for rent, instituted by the person, in whose favour a tenant has executed a lease, the tenant is estopped by S. 116 from raising a plea that the ostensible landlord was only a benamidar for somebody else. The question of a lessor's title is wholly foreign to a suit of this nature. *Bogar v. Karam Singh*, 141 P. R. 1906.

RATIGAN, J.

References—7 B L R 723, F, 7 B L R 720, 24 W. R. 44, Diss.

(35-a) S. 116—See No. 31, *supra*

(36) Ss 116 and 117—*Estoppel by agreement*—grantor and grantee—Possession obtained from a grantor without title—Title subsequently acquired by purchase—Denial of grantor's title—Constructive trust

The defendant having obtained possession of some land under a deed of sale from P, who had no title to it, afterwards perfected his title by purchase from the real owner. In a suit for recovery of possession of the land brought by the plaintiff, claiming to be a subsequent purchaser from P on the ground that the previous purchase by the defendant was a fraudulent one;

held—That the defendant was not estopped from denying P's title and setting up his own as purchaser from the real owner.

Per HARTER, J.—The estoppel only exists so long as the grantee claims under the title of his grantor alone (of).

Per WOODBURN, J.—Ss. 116 and 117 of the Evidence Act are not exhaustive of the doctrine of estoppel by agreement.

Evidence Act I of 1872.—(Continued).

The ground of the plea of estoppel laid down in *Dalton v. Fitzgerald* (5) and similar cases examined.

The principle of the rule in such cases is that where property is taken under an instrument and the taking possession is in accordance with a right, which would not have been granted except upon the understanding that the possessor should not dispute the title of him, under whom the possession was derived, there is an estoppel.

The ground of the rule of estoppel in the case of bailees, tenants, licensees and acceptors of bills of exchange indicated. *Rup Chand Ghose v. Sarbeswar Chandra Chunder*, 10 C.W.N. 747 = 3 C L J 629 = 38 C. 915.

RAMPINI and WOODBURN, JJ.

References—(a) 1 Ch. Div. 440, on appeal 2 Ch. Div. 86, D, 18 Eq. 320, R.

(b) 1 Ch. Div. 440, on appeal 2 Ch. Div. 86, D

(87) S. 117—See Nos. 31 and 36, *supra*
S. 116—I, Civ. Pro. Code, No. 90 and I, 426

Excavations.

See I, Registration Act, No. 11.

Exchange

—of occupancy rights—Suit by tenant for declaration that he is occupancy tenant by exchange—Jurisdiction—See Act XVI of 1887 (Punjab Tenancy) No. 12, P. R. 1906.

Excise Act.

S. 28—Suit for arrears of dues under—Relief for compensation joined—not entertainable by the Assistant Collector—no appeal lies—See Act II of 1901 (AGRA TENANCY), No. 31, 3 A L J 802

Excise Act (Punjab).

See Act XII of 1896 (PUNJAB)

Execution.

Liability of surety for due performance of appellate decrees to be proceeded against summarily in.—See CIVIL PROCEDURE CODE, No. 1 109 P. R. 1906.

See I, Registration Act (III of 1877), No. 11

Execution of Decrees.

(1) *Execution of decrees*—Absolute and conditional decrees—Notice—Ex-parte orders,

Execution of Decree.—(Continued).

inherent power of Court to set aside—Application to set aside ex parte order for execution of conditional decree—Limitation.

The Court has an inherent power to deal with an application to set aside an order made *ex parte* on a proper case being substantiated (a).

When a conditional decree is made, the plaintiff on the default of the defendant should apply to the Court, which passed the decree on notice to the defendant by motion on notice or by rule for an order absolute. Then, if and when such an order is obtained, application may be made in the usual way for execution of the order according to the provisions of the Civil Procedure Code. On the plaintiff applying on notice for such order, the Court will determine the question, if necessary, directing the issue to be tried in evidence, whether there has been default of the condition or not. If the Court finds that there has been such default, then the plaintiff will be entitled to an order absolute and should thereafter apply to execute that order.

The plaintiff obtained a conditional decree on the 21st of June, 1905, which provided that she would be entitled to eject the defendant from her premises unless the latter performed certain conditions. Disputes arise between the plaintiff and the defendant *re* the performance of the conditions and the plaintiff on the 31st of August, 1905, without notice to the defendant, applied for and obtained an order for ejectment of the defendant. The defendant was ejected on the 25th of September, 1905. The defendant applied and obtained a rule on the 1st of December, 1905, for setting aside, modifying so reviewing the order of 31st of August.

Held, that the defendant's application was not barred by limitation. **S. M. Sudevi Devi v. Sevaram Agarwallah**, 10 C.W.N. 806.

WOODROFFE, J.

Reference.—(a) 9 C.W.N. 81, *R.*

(2) *Practice—Procedure—Decree upon a compromise for execution of a conveyance—Execution of decree—Specific performance.*

Where a decree based upon a compromise directed that one party should execute a *kobala* in favour of another within a certain time after the date of the decree :

Held that the proper course for the parties would be to proceed regularly as if a decree for specific performance was made.

Execution of Decree.—(Continued).

The procedure in such a case laid down. **Hare Krishna Bomania v. Priya Nath Khamrol**, 10 C. W. N. 845.

PHATT and MITRA, JJ.

(8) *Sale in execution—Suit for confirmation of sale—parties.*

To a suit for confirmation of an auction sale in execution of a decree, the judgment-debtor and two rival decree-holders were made parties defendants. The judgment-debtor confessed judgment, but notwithstanding this the suit was dismissed as against all the defendants. The plaintiff appealed, but without making the judgment-debtor a party to his appeal, and eventually his claim was decreed as against the other two defendants. Meanwhile, however, the property, the subject-matter of the suit had been sold in execution of another decree against the same judgment-debtor. *Held*, on suit by the first auction-purchaser against the second to recover possession of the property purchased, that he could not succeed, the latter having purchased at a time when the auction sale to the former had been set aside and was not restored as against the judgment-debtor. **Girja Dayal v. Debi Prasad**, A. W. N. (1906), 40 = 3 A. L. J. 91.

KNOX and AIKMAN, JJ.

(4) *Limitation—Decree payable by instalments—Default in payment of instalments—Act No. XV of 1877 (Indian Limitation Act), S. 20—Civ. Pro. Code, S. 257 A.*

A decree for sale on a mortgage made the amount due thereunder payable by instalments with a condition that if default were made in payment of any instalment, the decree-holder might execute for the whole amount at once. Default was made, and the decree-holder exercised his option and obtained an order absolute for recovery of the whole amount due under the decree. On the 23rd of February, 1901, the decree-holder applied for execution in respect of the whole amount due and for sale of the mortgaged property. That application was, however, dismissed on the 15th May, 1901, for default of prosecution. On the 1st July, 1904, the decree-holder again applied for execution. *Held*, that execution of the decree was barred by limitation and that decree-holder could not under the circumstances pray in aid two payments of Rs. 150 and Rs. 50 alleged to have

Execution of Decree.—(Continued).

been received on the 11th of May, 1901, and the 15th of July, 1901 respectively. **Bhagwan Das v. Janki**, A. W. N. (1905), 268=28 A. 249.

BANERJI, J.

Reference.—16 A. 371, *Distd.*

(5) *Application for attachment of debts said to be due to judgment-debtor—Denial of Debts and alleged debtors—Procedure.*

Where a Court is asked in execution of a decree to attach debts alleged by the decree-holder to be due by third person to the judgment-debtor, it is no business of the Court to determine in the first instance whether the debts are really due or not, or to refuse execution if the parties alleged to be debtors to the judgment-debtor deny that they are so. But after attachment, the Court may either sell the debts after giving notice to the intending purchasers that, that the existence of some of them denied by the alleged debtors, or may appoint a receiver to realize the debts by bringing suits against the debtors. **The Maharaja of Benares v. Patarij Kunwar**, A.W.N. (1905), 277=28 A. 202.

BANERJI and RICHARDS, JJ.

(6) *Duty of judgment-creditor to disclose encumbrances in his own favor.*

When a judgment-creditor brings the property of the judgment-debtor to sale, he is bound to disclose all the encumbrances in his favor and to state whether such encumbrances were created before or after the attachment. If he fails to do so, he cannot afterwards sue the auction-purchaser to establish the encumbrances in his favor, provided the auction purchaser has paid full price without a knowledge of the existence of encumbrances in the judgment-creditor's favor. **Rane Ratan Kuar v. Ratil Lal Seth Mahesari**, 2 N.L.R. 106.

BATTEN, A.J.C.

References.—12 B. 678, 22 B. 686, 15 M. 412, 3 C. P.L.R. 15, 14 C. P.L.R. 17, 21. A. 309 & 1 C. 387, R.

(7)—*by a decree-holder mortgagee—meaning of "Legally recoverable in S. 90, Transfer of Property Act—Presumption.*

A decree-holder mortgagee, who has purchased the mortgaged premises after obtaining leave to bid at the sale, is in the same position as an independent purchaser and is only bound to give credit to the mortgagor for the actual amount of his bid (a).

Execution of Decree.—(Continued).

If the validity of the execution-sale is not challenged in the manner prescribed by law, the judgment-debtor cannot raise the objection when the decree-holder applies for a personal decree for the balance under S. 90 of the Transfer of Property Act (b). **Parbati Charan Roy v. Gobinda Chandra Kundu**, 1 C.L.J. 246.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 10 C. 192, 19 C. 4 and 18 A. 81, R. (b) 1 A.L.J. 486, R.

(8) *Questions within the jurisdiction of the Court of execution.*

A Court executing a decree for possession against B could not decide whether he was entitled to resist the execution on the ground that he had a title independent of that decree. If it did decide it, it was beyond its jurisdiction. **Kallash Chandra Mandal v. Ram Narain Giri**, 4 C.L.J. 211.

GHOSE, AG. C.J. and CASPERSE, J.

(9) *Construction of decree—Execution—joint decree holders—Application by one, when maintainable.*

Where one of several joint decree-holders made an application for the execution of the whole decree and he alleged that the other decree-holders had assigned to him the interest of them all, and the latter also made an application intimating that they had no objection to the execution of the decree at the instance of their assignee, the applicant.

Held—That the application was maintainable, **Krishna Kishore Chakravarti v. Sukha Sindhu Sanyal**, 10 C.W.N. 1000.

RAMPINI and WOODROFFE, JJ.

(10) *Dismissal of petition for execution—Necessity for fresh attachment.*

It can hardly be laid down as a general proposition of law that, because an execution-case has been dismissed by reason of no steps having been taken by the decree-holder, within a certain time limited, to bring the attached property to sale, the attachment that has been already put upon it necessarily falls through. In each case it is a question of intention. If, in any particular case, the Court thinks that the decree-holder intended to abandon the proceedings, it may require an application for a fresh attachment before a sale-proclamation is issued. **Govinda Chandra Pal v. Dwark Nath Pal**, 33 C. 666.

GHOSE and CASPERSE, JJ.

Execution of Decree.—(Continued).

Reference.—9 M.I.A. 324, 327 (P.J.), R.

(11) *Decree by first appellate Court, limitation for execution of, starting point of, in case of withdrawal of second appeal, date of final order or decree of the appellate Court.*

Application for execution of the decree of a first appellate Court, more than three years from its date but within three years of the date of an order of the second appellate Court, dismissing the second appeal, as the result of an application for withdrawal of the second appeal. *Held*, time began to run from the date of the order dismissing the second appeal, such order being the one finally disposing of the second appeal, and not from the date of the decree of the first appellate Court. *Sadagopa Ramanuja Periya Jeeyangar v. Lakshmi Doss*, 1 M. L. T. 233 = 16 M. L. J. 393.

WHITE C.J., and SUBRAHAMANIA AIVAR and HENSON, JJ.

References.—9 C. 100, *Appr.* and F., and 22 B. 506, not F.

(12) *Deposit of money in execution under a mistaken belief of liability—Suit to recover the sums—Limitation runs from the date on which the decree-holder withdraws the money.*

The plaintiff, believing that the property sold in execution of a decree against himself and the defendants belonged to him, deposited the decretal amount on the 20th February, 1901. Then he applied for release of the property from attachment. It turned out that the property belonged to the defendants and the amount deposited was made over to the decree-holder on the 18th December, 1903. The plaintiff then brought the present suit for recovery of the amount.

Held, that the time would begin to run against the defendants from the date the money was made over to the decree-holder. *Ram Sarup v. Chhajju Mal*, 3 A.L.J. 607 = A.W.N. (1906), 289.

STANLEY, C.J., and KNOX, J.

(13) *Rules of execution different in different districts—Practices—Procedure.*

Where, in different districts, different modes of execution are prescribed, and where the question is how a decree passed in one, but of which execution is sought in another, of such districts is to be executed, the executing Court must be

Execution of Decree.—(Continued).

guided by the rules in force in its own district. *Martand Trimbaik v. Tinayak Kashinath*, 3 Bom. L. R. 632.

ASTOMAN ISHAMAM, JJ.

(14) *Additional Subordinate Judge—Abolition of Court—Bengal, N.W.P. and Assam Civil Courts Act (XII of 1887), S. 17—Execution—Application for.*

A decree was made by the Court of an Additional Subordinate Judge. Subsequently another Additional Subordinate Judge was appointed.

Held, that application for execution of the decree passed by the former Additional Subordinate Judge must be made to the permanent Subordinate Judge. *Tara Chand Narwari v. Ram Nath Singh*, 4 C.L.J. 473.

MACLEAN, C.J., & MOONJEET, J.

(15) *Decree for mesne profits against father—Attachment—Execution proceeding struck off whilst attachment continued—Validity—Fresh proceeding in execution without attachment—Sale order—Death of judgment-debtor before sale—Sons and grandsons of bound.*

When an execution proceeding is struck off, it does not necessarily put an end to the attachment.

It is competent for the Court to make an order striking off an execution-proceeding and at the same time continuing the attachment (a).

When an executing Court in striking off an execution proceeding ordered the attachment to subsist for three months, and before that period expired, the decree-holder made a fresh application for execution and the Court ordered sale proclamation to issue in respect of properties attached in the previous proceeding, but the proclamation could not be served on the judgment-debtor, a member of a joint Mitakshara Hindu family, owing to his death.

Held—That there being a subsisting attachment followed by an order for sale made in the lifetime of the judgment-debtor, the decree-holder was entitled to proceed with the sale and realise his decree (b). *Peary Lal Sinha v. Chandi Charan Sinha*, 11 C.W.N. 163.

RAMPINI & MOONJEET, JJ.

References.—(a) 9 C.W.N. 601 = 52 I. A. 102; 1 C.L.J. 381, *relied on*; 15 A. 49, *Dis.* (b) 6 I. A. 68, F., 17 I. A. 194, D., 13 A. 440, R.

Execution of Decree.—(Continued).

- (16) *Application for execution of decree, passed by a Court, made to another Court, to which local jurisdiction in respect to the subject-matter of the suit has been transferred—Civ. Pro. Code, S. 649—Transfer of decree for execution—jurisdiction, local, transfer of.*

Held, further, that, under the provisions of S. 649 of the Civ. Pro. Code, if, after a Court has passed a decree, the local jurisdiction in respect to the subject-matter of the suit, is transferred by order of Government to some other Court, the application for execution of the decree may be made either to the Court which passed the decree or to the Court to which the local jurisdiction has been transferred. Makrand v. Ram Charan, 9 O. C. 281.

EVANS, J.C.

References:—25 C. 315 & 28 C. 298, R.

(17) A decree of a civil Court, for partition cannot be fully executed until the decree-holder's name is recorded in the revenue-papers under Act III of 1901—See CIV. PRO. CODE, No. 145, A. W. N. (1906), 53.

(18) Application for—granting an injunction to abstain from particular Act, Art. 179 of the Limitation Act, does not apply to an—See LIMITATION ACT, No. 129, A. W. N. (1906), 10.

(19) Property sold as non-ancestral after enquiry held and notice to judgment-debtors—Plea that property sold was in fact ancestral barred—See CIV. PRO. CODE, No. 124, A. W. N. (1906), 9=9 A. L. J. 140.

(20) Resistance of judgment-debtor's application for insolvency—Step in aid of execution—See LIMITATION ACT, No. 133 A. W. N. (1906), 54.

(21) Step in aid of execution—Decree-holder certifying payment out of Court and filing receipt in Court—See LIMITATION ACT, No. 142, 34 P. L. R. 1906.

(22) *Res judicata* in—Previous objection, dismissal of, without judicial investigation whether a bar to subsequent application—See RES JUDICATA, No. 9, 3 C. L. J. 240=10 C. W. N. 209.

(23) Application for—(a mortgage-decree) after partial satisfaction by a previous execution-proceeding—See LIMITATION ACT, No. 128, 3 C. L. J. 291.

(24) Step in aid of execution, application for leave to bid, whether a—See LIMITATION ACT, No. 144, 3 C. L. J. 240.

Execution of Decree.—(Continued).

(25) Application for withdrawal of money standing to the credit of a decree-holder, whether "a step in aid of execution"—See LIMITATION ACT, No. 134, 3 C. L. J. 95.

(26) Application of S. 108, C. P. Code, to proceedings in—See CIV. PRO. CODE, No. 3, 3 C. L. J. 276.

(27) Execution of mortgage-decree against judgment-debtor's successor claiming by survivorship, fresh suit whether necessary for—See CIVIL PRO. CODE, No. 105, 3 C. L. J. 181.

(28)—for perpetual injunction, application for—Notice to judgment-debtor, whether necessary—Relief not prayed for, whether allowable—See CIV. PRO. CODE, No. 101, 3 C. L. J. 112.

(29) The Court to which an application for—has been made, has no authority to execute it when a superior Court has ordered that execution shall be stayed—See CIV. PRO. CODE, No. 285, 3 C. L. J. 67.

(30) Necessity for furnishing security where judgment-debtor has once applied to a proper Court for insolvency—See CIV. PRO. CODE, No. 203, 9 O. C. 42.

(31) Contract Act, S. 135, applicability of, to—See CONTRACT ACT, No. 99, 9 O. C. 28.

(32) Effect of remand by appellate Court under S. 502, Civil Procedure Code, on limitation for—of lower Court—See LIMITATION ACT, No. 132, 3 A. L. J. 8.

(33) *Res judicata*—Objection to execution decided *ex parte*—Same objection repeated at a subsequent execution, admissibility of—See RES JUDICATA, No. 6, 3 A. L. J. 198.

(34) Rent-decree against recorded tenant—Transferee of portion of occupancy holding before decree, whether representative of judgment-debtor—See CIV. PRO. CODE, No. 106, 10 C. W. N. 240.

(35) Powers of executing Court in respect of uncertified adjustment in supercession of the decree—See CIV. PRO. CODE, No. 137, 16 M. L. J. 33.

(36) Application under S. 232, C. P. C., dismissed without enquiry—Separate suit for declaration, whether maintainable—See CIV. PRO. CODE, No. 103, 16 M. L. J. 27.

(37) Application by judgment-creditor for payment of money in Court not raised in—is

Execution of Decree.—(Continued).

governed by Art. 178 of the Limitation Act and is a step in aid of execution—See **LIMITATION ACT**, No. 125, 10 C.W.N. 254.

(38) Order passed in—under Act I of 1879 (Bengal), no second appeal lies from an—See **APPEAL (SECOND APPEAL)**, No 1, 10 C.W.N. 284.

(39) Sale in execution—Money-decree in favour of mortgagee, sale of mortgaged property in execution of—Sale void as contravening S. 99 of the Transfer of Property Act—See **TRANSFER OF PROPERTY ACT**, No. 107, 33 C. 288.

(40) High Court's setting aside its own decree on review—Right to restitution in execution—See **CIV. PRO. CODE**, No. 126, A.W.N. (1906), 171.

(41) Where land ordered to be sold is ancestral in whole or in part the decree should be transferred to the Collector for execution as regards such ancestral property only—See **CIV. PRO. CODE**, No. 190, A.W.N. (1906), 148.

(42) Application for specification of share by meets and bounds in respect of a defective partition-decree, whether amounts to application for—See **CIV. PRO. CODE**, No. 224, 47 P.R. 1906.

(43) Rateable distribution under S. 295, Civ. Pro. Code—Competition between a person attaching judgment-debtor's property before judgment and other creditors—Attaching before judgment confers no priority—See **CIV. PRO. CODE**, No. 100, 10 C.W.N. 684.

(44) Foreclosure-decree, applicability of S. 268, Civ. Pro. Code to—See **CIV. PRO. CODE**, No. 189, 44 P.R. 1906.

(45) Whether one of several joint decree-holders can certify satisfaction of entire decree—See **CIV. PRO. CODE**, No. 138, 84 P.R. 1906.

(46) Release of judgment-debtor from jail for non-payment of subsistence money cannot give a fresh starting point—See **LIMITATION ACT**, No. 15, 72 P.L.R. 1906.

(47) Insanity of decree-holder when cannot save limitation—See **LIMITATION ACT**, No. 15, 72 P.L.R. 1906.

(48) Decree for sale—appeal by one defendant—Time against others saved—See **LIMITATION ACT**, No. 180, 3 A.L.J. 381.

(49) Attachment of property in hands of legal representative of deceased judgment-debtor—objection by legal representative that the attached property is trust property not liable

Execution of Decree.—(Continued).

to attachment—order thereon not appealable—See **CIV. PRO. CODE**, No. 190, 3 A.L.J. 370=A.W.N. (1906), 187.

(50) Second application for—by attachment and sale of property, only a small portion of the decree being realised by attachment and sale on the first application—Continuation of proceedings—See **ACT II OF 1901 (AGRA TENANCY)**, No. 30, A.W.N. (1906), 97.

(51) Dismissal of application under S. 292, Civ. Pro. Code—Maintainability of suit to establish right to execute decree—See **CIV. PRO. CODE**, No. 102, A.W.N. (1906), 138.

(52) Suit against Hindu father and his undivided son—Son exempted—Liability of ancestral property in execution of decree—See **HINDU LAW (JOINT FAMILY)**, No. 10, A.W.N. (1906), 187.

(53) Application to revive former application for—Limitation—See **LIMITATION ACT**, No. 126, A.W.N. (1906), 162.

(54) Applicability of S. 19 of the Limitation Act to proceedings in—See **LIMITATION ACT**, No. 22, 3 C.L.J. 847.

(55) To render an attachment in—valid, the decree must be subsisting at its date—See **ATTACHMENT**, No. 1, 29 M. 175.

(56) Application by mother as guardian for a person not in reality a minor not one in accordance with law so as to save limitation—See **LIMITATION ACT**, No. 181, 1 M.L.T. 118.

(57) Surety for performance of decree passed before his entering into obligation—Whether decree can be executed against him—See **CIV. PRO. CODE**, No. 184, 8 Bom. L.R. 367.

(58) Decree-holder's taking possession of greater area than what was decreed—Suit by judgment-debtor for possession, maintainability of—See **CIV. PRO. CODE**, No. 110, 3 A.L.J. 601.

(59) Temporary stay of—Surety—Discharge of surety—See **CIV. PRO. CODE**, No. 284, 8 Bom. L.R. 587.

(60) Surety guaranteeing payment of judgment-debt—Execution against surety when proper—See **CIV. PRO. CODE**, No. 201, 10 C.W. No. 820.

(61) Whether an application under S. 90 of the Transfer of Property Act, is a step in aid of execution—See **LIMITATION ACT (XV OF 1887)**, No. 138, 4 C.L.J. 141=39 C. 307,

Execution of Decree.—(Continued).

(63) First application for execution by sale of mortgaged property stayed by injunction in the suit of a claimant—Second application after withdrawal of suit and injunction, whether one in continuation of first for purposes of limitation—See LIMITATION ACT, No. 189, 38 C. 689.

(64) Party to suit under S. 244, Civ. Pro. Code—Assigned of decree of appellate Court, right of, to obtain restitution—See CIV. PRO. CODE, No. 307, 38 C. 857.

(64) Execution of decree pending appeal—Reversal of decree in appeal—Right to restitution—See CIV. PRO. CODE, No. 307, 38 C. 857.

(65) Court executing decree not to go behind decree—See CIV. PRO. CODE, No. 141, 29 M. 814.

(66) Power of Court executing decree to refer to judgment, or award on which the judgment is based, to interpret decree—See ACT XXIII OF 1871 (PENSIONS), No. 3, 95 P.R. 1906.

(67) Liability of water-advantage-rate to attachment in execution of decree—See ACT XXIII OF 1871 (PENSIONS), No. 4, 96 P.R. 1906.

(68) Scheme for liquidation of money decrees by Collector—Procedure on disapproval of such scheme by Court—See CIV. PRO. CODE, No. 198, 68 P.R. 1906.

(69) Disability of some of joint judgment-creditors when time begins to run for applying for execution of decree—limitation—See LIMITATION ACT (XV of 1877), No. 14, 9 O.C. 269.

(70) Limitation for an application to execute a mortgage-decree leaving the terms as to the sale of the land to be determined later on—See LIMITATION ACT, No. 185, 29 M. 46.

(71) No second appeal lies from an order on an application by an owner of property praying for its exemption from sale in—See CIV. PRO. CODE, No. 121, A.W.N. (1906), 62.

(72) Security bond by surety for performance of appellate decree, whether could be enforced by proceedings in—See CIV. PRO. CODE, No. 297, 125 P.R. 1906.

(73) On appeal from order in, whether appellate Court can alter effect of decree—See CIV. PRO. CODE, No. 144, 8 L.B.R. 129.

(74) Sale of immoveable property in, effect on, of failure to deposit purchase money—See CIV. PRO. CODE, No. 173, 3 L.B.R. 245.

Execution of Decree.—(Continued).

(75) Limitation—pendency of application—duty of Court on receiving application for order absolute. See TRANSFER OF PROPERTY ACT, No. 79, 1 M.L.T. 294.

(76) Decree against Head of a Mutt in suit on a pronote binding on successor at the time of—See RELIGIOUS ENDOWMENTS, No. 3, 16 M. L.J. 415.

(77) Obstruction to, by a person not a judgment-debtor—Procedure—See CIV. PRO. CODE, No. 198, 16 M.L.J. 483.

(78) Court's order staying, effect of sale by officer in contravention of—See PRE-EMPTION, No. 43, 0 O.C. 289.

(79) Contribution by reason of purchased mortgaged property by decree-holder is to be worked out in a separate suit and not in—see MORTGAGE (GENERAL), No. 24, 4 O.L.J. 573.

(80) Execution transferred to Collector—Partial execution—Application for instalments—Limitation Act, Art. 175—See ACT XVII (DEKHAN AGRICULTURISTS RELIEF) OF 1879, No. 3, 8 BOM. L.R. 963.

(81) Application for, not accompanied by copy of decree—Application "in accordance with law"—Bombay High Court Rule 80 (Civil circulars)—See LIMITATION ACT, No. 140, 8 BOM. L.R. 892.

(82) Restitution of property sold in, reversed in appeal—Procedure—See CIV. PRO. CODE, No. 306, A. W. N. (1906), 815.

(83) Application for a 'seal warrant', whether a stay in aid of execution—See LIMITATION ACT, No. 186, A. W. N. (1906), 269.

(84) Jurisdiction of execution Court to question validity of decree—See ACT VII OF 1889, No. 1-a, 145 P.L.R. 1906.

(85) Application to set aside a sale under S. 810 A, Civ. Pro. Code—Who have right to apply—Revision—See CIVIL PROCEDURE CODE, No. 177, A. W. N. (1906), 198.

(86) Death of judgment-debtor pending execution—Questions arising between representatives of judgment-debtor and decree-holder—See CIVIL PROCEDURE CODE, No. 107, A. W. N. (1906), 190.

(87) A Court executing a decree has no power to question the jurisdiction of the Court which passed it—See ACT XXIII OF 1871 (PENSIONS), No. 1, 7 BOM. L. R. 659.

Execution of Decree.—(Concluded).

(88) Application for attachment—Omission to verify inventory of property sought to be attached is a mere irregularity and does not vitiate the application—See CIVIL PRO. CODE, No. 104, A.W.N. (1905), 263.

(89) Sale in execution—Non-payment of required portion of purchase-money at date of sale—Irregularity—See CIVIL PRO. CODE, No. 104, A.W.N. (1905), 263.

(90) Order attaching the decree under S. 273, effect of—Want of jurisdiction to proceed with execution—Sale without jurisdiction, validity of—See CIVIL PRO. CODE, No. 150, 82 C. 1104.

See, also, I, Act VIII of 1885 (Bengal Tenancy), Nos. 21 (a) and 34; Act XII of 1891 (N.W.P. Rent), No. 1; Act XIII of 1900 (Punjab Land Alienation Act), No. 2; Act III of 1885 (Madras), No. 1; and Execution of Decree, 126 to 142.

Execution proceedings.

Suit maintainable by a party to, for setting aside a sale certificate—See CIV. PRO. CODE, No. 113, U. B. R. (1905), Civ. Procedure, 86.

Execution Sale.

Purchase at, with knowledge of defective title—Right to refund of purchase-money—warranty of title—See CIV. PRO. CODE, No. 185, 3 A. L. J. 819.

Executor.

(1) Powers of—restricted by will—See ACT V OF 1881 (PROBATE), No. 14, 3 C. L. J. 260.

(2) Person confided with the execution of a will becomes—by implication—See ACT V OF 1881 (PROBATE), No. 1, 10 C. W. N. 232.

(3) One of several—has power to release a debt due to the deceased when it subsists as a debt and has not merged into a decree—See ACT V OF 1881 (PROBATE), No. 15, 3 A.L.J. 49.

(4) Express or implied appointment of—See CIV. PRO. CODE, No. 36, 10 C. W. N. 662.

(5) Person other than an, when could sue for debts due to estate—See ACT V OF 1881, (PROBATE AND ADMINISTRATION), No. 2, 3 L.B. R. 192.

See, also, I, 442, & 443.

Executor de son Tort.

Principles of English Law relating to—how far applicable to Hindus—See ADMINISTRATOR, No. 1, 10 C.W.N. 566.

See, also, I, 443.

Executory Contract.

Assignment of—legality and validity of—See TRANSFER OF PROPERTY ACT, No. 3, 10 C.W.N. 755.

Expediency.

See, I, Res Judicata No. 3.

Ex parte decree.

Whether a decree on an alleged compromise repudiated by defendants is an—See CIV. PRO. CODE, No. 76, 3 C.L.J. 158.

Expert opinion.

See, I, Act I of 1894, No. 6.

Experts.

Evidence of—whether admissible on questions of Hindu Law—See HINDU LAW (ADOPTION), No. 7, 15 M.L.J. 178.

Ex-proprietary holding.

See I, Act III of 1901 (N. W. P. and Oudh), No. 1.

Extension of time.

--till the opening day where time fixed for deposit of decretal amount ends on a holiday—See HOLIDAYS, No. 1, 3 C.L.J. 339.

False imprisonment.

(1) Information given to the Police—Prosecution after investigation—Acquittal of accused—Suit for damages for—against informant, maintainability of.

A informed the Police that certain persons had attempted to murder him and named the plaintiff and others as being those, who had done the act. The Police, after holding an investigation, sent them to a Magistrate. After holding a preliminary inquiry, the Magistrate committed them for trial to the Court of Session. The trial resulted in the acquittal of the accused. A was now sued for damages for false imprisonment. *Held*, that the suit was not maintainable. **Balbhaddar Pande v. Basdeo Pande**, 3 A.L.J. 650.

STANLEY, C.J., and RUSTOMJEE, J.

Reference :—26 M. 262, *Appl.*

Family arrangement.

(1) Partition made in settlement of doubtful claim, if valid and binding on the parties thereto—validity of arrangement, not dependent on length of time during which it has been acted upon.

Family Arrangement.—(Concluded).

A partition or family arrangement made in settlement of a doubtful, if not a disputed claim, by arbitrators appointed by the parties, effecting a division of the family properties and debts, and drawing up a list of them, which is signed by the parties and carried out and acted upon by them for sometime, is a valid and binding arrangement; which the parties to it cannot deny, ignore or resile from (a).

Per MOOKERJEE, J.—If parties have settled a dispute, such settlement will not be set aside, on the ground that it gave to one of the parties more than what he might possibly have recovered, if he had taken the judgment of the Court upon the matters then in difference between them (b).

Per MOOKERJEE, J.—A family arrangement may be upheld, although there were no rights actually in dispute at the time of making it, and the Courts will not be disposed to scan with much nicety the quantum of consideration. It is a mistake to suppose, that the doctrine of family arrangement extends no further than arrangements for the settlement of doubtful or disputed rights; the principle is applicable to cases in which arrangements are made between members of a family not merely for the preservation of its peace, but also for preservation of its property (c).

The validity of a family arrangement does not depend upon the length of time for which it has been acted upon. A fair compromise of a doubtful right is in itself a sufficient foundation for the agreement (d).

But if an attempt is made to set aside a family arrangement on the ground of mistake inequality of position, undue influence, coercion fraud or any similar ground, the length of time during which it has been allowed to stand unchallenged, may be a material element for consideration. **Helan Dasi v. Durga Das Mundal**, 4 C.L.J. 323.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 13 M.I.A. 497 (512), 14 M. I.A. 24 (86), 22 B. 482 (489), 21 I.A. 35=20 C. 373, 25 I.A. 161=26 C. 81 (100), (1867) L.R. 2 Ch. App. 294, R. (b) 1 C.L.J. 338 (406), R. (c) (1867) L.R. 2 Ch. 294, R. (d) (1783) 1 Atk. 2, 1 W. and T.L.C. 7th Ed. 223, R.

See, also, I, Hindu Law (Reversioners), No. 19.

Fiduciary relation.

The general rule of viewing with disfavour transactions between two persons standing in—will not apply where no wrongful advantage has been secured to one of them at the expense of the other—**Sec HINDU LAW (TRUSTS)**, No. 1, 29 M. 1.

See, also, I, 143 and 144.

Fishery.

(1) *Rights of Jalkar—Presumption as to grant Government—Evidence.*

Although no evidence is forthcoming of an express grant of a right of fishery in a navigable river, a grant may be presumed from long continued user and from the orders passed by the Revenue authorities from time to time in respect to the Jalkar, and positive evidence of a grant by Government is not absolutely necessary. **Sarat Chandra Roy v. Kalaram Malo**, 33 C. 1349.

GHOSE, C. J., and GEDDIT, J.

Reference:—11 C. 434, R.

Fixtures.

See I, Landlord and Tenant, No. 35.

Foreclosure.

See, also, I, Transfer of Property Act, No. 56.

Forest Act VII of 1879 (Bombay).

I, 144 & 145.

Forest Land.

I, 145 and 146.

Forfeiture.

(1) Relief against—of the deposit for the due performance of a contract when to be granted—**See CONTRACT**, No. 1, 16 M.L.J. 87.

(2) When denial by tenant of landlord's title operates as—**See LANDLORD and TENANT**, No. 1, 3 C.L.J. 201.

(3)—of service tenure—Repudiation of landlord's title—Suit for ejectment—Necessity for notice to quit—**See SERVICE TENURE**, No 1, 3 C. L. J. 274.

(4) Consent decree in terms of compromise—Forfeiture clause in the decree—Court's power to relieve against—**See CIV. PRO. CODE**, No 221, 8 Bom. L. R. 819.

See, also, I, 147.

Forma Pauperis.

(1) Right to be declared a pauper, whether personal—death of applicant to sue in forma

Forma Pauperis.—(Concluded).

pauperis—right of heir to be substituted—See CIV. PRO. CODE, No. 211, 4 C.L.J. 284.

(2) Compromise of suit in—withdrawal of suit—Failure in the suit, meaning of—See CIV. PRO. CODE, No. 233, 8 Bom. L.R. 689 (F. B.).

(3) Application to file a suit in—Civ. Pro. Code, S. 401—See CIV. PRO. CODE, No. 228, 8 Bom. L.R. 671.

(4) Suit in—application to file—Possession of property by the applicant of value less than the amount required for Court-fee—Revision—See CIV. PRO. CODE, No. 247, 8 Bom. L.R. 642.

(5) Application for leave to appeal in—subsequent presentation of appeal on stamp, whether will be in time—See LIMITATION ACT, No. 3, 78 P.R. 1906.

Fraud.

(1) Suit to set aside on the ground of—decree against a minor on compromise by guardian, maintainability of—See CIV. PRO. CODE, No. 245, 8 C. L. J. 119.

(2)—in connection with a petition of compromise, is good ground for review of the decree—See CIV. PRO. CODE, No. 339, 10 C. W. N. 286.

(3) The nature of,—to be proved under S. 92, proviso 1—See EVIDENCE ACT, No. 17, 8 Bom. L. R. 287.

(4) Fraudulent assignment, of an executory contract—See TRANSFER OF PROPERTY ACT, No. 3, 10 C.W.N. 755.

(5)—not carried into effect—Right of beneficial owner in a *benami* transaction to show real nature of the transaction—See BENAMI TRANSACTIONS, No. 2, 10 C.W.N. 650.

(6) Judgment obtained by perjury may be set aside in a fresh suit on the ground of—See RIGHT OF SUIT, No. 1, 16 M.L.J. 89.

(7) Whether action of several co-sharer landlords in bringing a joint suit for rent against intermediate tenant, will amount to—See ACT VIII OF 1885 (BENGAL TENANCY), No. 32, 3 C.L.J. 378.

(8) Suit to set aside an auction-sale on the ground of—whether compensation could be awarded in the alternative. See CIV. PRO. CODE (TRAVANCOR), No. 4, 21 T.L.R. 206.

(9) Oral sale of land followed by unregistered deed—Registered conveyance by defendant to plaintiff to defraud and defeat the third party's prior title under—Plaintiff concerned in the fraud and *in pari delicto* with the defen-

Fraud.—(Concluded).

dant—not entitled to any relief against the defendant—See ACT II OF 1882 (TRUSTS), No. 9, 15 M.L.J. 478.

See, I, 448, 449 and Civil Pro. Code, Nos. 146, 162; Mortgage (sale), No. 4; Revenue sale, No. 2; Evidence Act, No. 36; Limitation Act, Nos. 46 and 83 and Contract Act, No. 4.

Fraudulent transfer.

—of moveable property—Validity of—See TRANSFER OF PROPERTY ACT, No. 39, 16 M.L.J. 437.

Gambling.

See, I, Right of suit, No. 23.

Gambling in litigation.

See I, Contract Act, No. 7.

General Clauses Act.

See ACT X OF 1897 (IMPERIAL).

Ghatwali Tenures.

See I, 450—452.

Gift.

(1) A—of the residue 'to such charities as the trustees may think deserving,' whether valid—See ACT X OF 1865 (SUCCESSION), No. 1, 8 Bom. L.R. 322.

(2) By sonless proprietor in Punjab to daughter's son and sons daughter, validity of—See CUSTOMS (REGULAR TO PUNJAB), No. 56, 185 P. R. 1906.

See, I, Limitation Act, No. 32 and Will, No. 19.

Good faith.

Meaning of, in the case of a person taking a negotiable instrument—See NEGOTIABLE INSTRUMENTS, No. 1, 8 Bom. L.R. 321.

Good-will.

See, I, Limitation Act, No. 19.

Goshain.

Posthumous *chela*—appointment by widow of Goshain—inheritance—See HINDU LAW (INHERITANCE), No. 11, 2 A.L.J. 717.

Government.

(1) Right of, to acquire land necessary for convenient use of a house—See ACT I OF 1884 (LAND ACQUISITION), No. 2, 9 C.L. 311.

(2) Acquisition and sale of land by Co-sharer - Pre-emption—See PRE-EMPTION, No. 10, 2 A.L.J. 787.

Government—(Concluded).

See, also, *I. Civil Pro. Code, No. 231; Landlord & Tenant, No. 24; Tax, No. 2; Grant, No. 3; and I. 453, Nos. 3, 7 and 8.*

Governor-General.

See, *I. Civil Pro. Code, No. 242.*

Government Promissory Note.

Transfer of interest in—Applicability of Act XXVI of 1881—See Act XXVI of 1881 (NEGOTIABLE INSTRUMENTS), No. 8, 9 O. C. 174.

Grant.

See *I. 454 & 455 and Inam, No. 3; Construction (of) Deeds, No. 12; Khorposh (Grant No. 1; Mines, No. 3; See Act I of 1879 (Chota Nagpur Landlord & Tenant), No. 1 and Mineral Rights No. 1.*

Grantee.

Grant for maintenance, resumable on death of—See MAINTENANCE GRANT, No. 2, 4 C.L.J. 399.

Grantor.

Grant for maintenance ceases with life of—See MAINTENANCE GRANT, No. 2, 4 C.L.J. 399.

Guardian.

(1) Power of certified—to enter into a contract for sale on behalf of the ward—Failure to obtain sanction of District Judge, effect of—Suit for specific performance—See GUARDIAN and WARD, No. 1, 10 C.W.N. 763.

(2) Contract made on minor's behalf by whether minor can sue to set aside—See MINOR, No. 3, 2 N.L.R. 146.

(3) Status of a Mahomedan mother as, of the property of her minor children—See MAHOMEDAN LAW (SALE), No. 2, 4 C.L.J. 578.

(4) Question whether sale by, was for benefit of minor, whether a question of fact or of law—See MAHOMEDAN LAW (ALIENATION), No. 3, 4 C.L.J. 495.

(5) Power of lunatic's—to contract without permission from Court—See Act XXXV of 1858 (LUNATICS), No. 6, 3 A.L.J. 686.

(6) Authority of—to agree to arbitration on behalf of a minor—See CIV. PRO. CODE, No. 244, A.W.N. (1905), 171.

Guardian ad litem.

(1) Power of High Court, as an appellate Court, to make an interlocutory order appointing a—See Act VIII of 1880, (GUARDIAN and WARD) No. 1, 3 C.L.J. 29.

Guardian ad litem—(Concluded).

(2) Married woman's competency to be a—Her right to enter into a compromise on behalf of an infant defendant—validity of compromise—See CIV. PRO. CODE, No. 240, 39 M. 58 = 16 M.L.J. 14.

(3) Application to set aside *ex-parte* decree against minor represented by—not formally appointed, whether should be made only by such guardian—See CIV. PRO. CODE (TRAVANCORE), No. 2, 21 T.L.R. 70.

(4) Civil Procedure Code, S. 443, non-compliance with provisions of, in appointing—Effect thereof on decree passed—See CIVIL PROCEDURE CODE, No. 239, A.W.N. (1905), 229.

Guardian and Minor.

(1) Minor's property—Change of investment—Court's discretion in sanctioning the change—Guardian's duty to preserve and not to add to minor's property.

Guardians are in a fiduciary position and the Court should ordinarily be guided by the rules embodied in the Trusts Act, 1882, in sanctioning changes in the investment of the minor's property.

A trustee is not allowed the same discretion, in investing the moneys of the trust, as if he were a person *sui juris* dealing with his own estate. Business men of ordinary prudence may, and frequently do, select investments, which are more or less of a speculative character, but it is the duty of a trustee to confine himself to the class of investments, which are permitted by the trust, and avoid all investments which are attended with hazard.

The duty of guardians is primarily to preserve and not to add to the property of the minor. *In re Cassumali Javerbhai Pirbhai*, 8 Bom. L.R. 883 = 30 B. 691.

SCOTT, J.

References:—34 Beav. 411 & 12 App. Cas. 727 at p. 733, R.

(2) Power of Hindu father to appoint a guardian for his minor son under a will—See CIV. PRO. CODE, No. 238, 8 Bom. L.R. 533 (F. B.)

(3) Sufficiency of order for certificate of guardianship under Act XX of 1864 (Bombay) See Act IX of 1875 (INDIAN MAJORITY), No. 3, 8 Bom. L.R. 897.

(4) Continuance of a married woman (mother) as guardian notwithstanding S. 457, Civ. Pro. Code—Validity of,—See CIV. PRO. CODE, No. 241, 144 P.L.R. 1906.

Guardian and Minor.—(Concluded).

(5) Sale by *de facto* guardian of Mahomedan minor—Effect on the minor—See TRANSFER OF PROPERTY ACT, No. 28 a, 1 M.L.T. 433.

Guardian and Ward.

(1) Contract for sale by guardian of minor—subsequent sale to third party—Sanction of District Judge—Sale, void or voidable—Specific performance.

A certificated guardian of certain minors contracted to sell their property to the plaintiff for a consideration of Rs. 217, of which Rs. 30 was to be paid in cash and the balance of Rs. 187 was to redeem a mortgage upon the property executed by the late father of the minors in favour of the plaintiff. The guardian undertook to obtain the sanction of the District Judge to the transaction. She, afterwards, fraudulently conveyed the property by registered deed to her relative, the defendant No. 1, who was fully aware of the previous contract with the plaintiff.

Held, that the sale to the plaintiff was not *ipso facto* void but only voidable at the instance of any person affected thereby. That the plaintiff became entitled to obtain specific performance when, by finding that the sale to him was for the minor's benefit, the District Judge in effect sanctioned the sale. **Musst. Etwarla v. Chandra Nath Mukerjee**, 10 C.W.N.763.

PRATT AND GEIDT, JJ.

(2) Minor—Guardian ad litem—Not properly represented—Decree by default—sale to stranger—not binding on minor—Civil Pro. Code, S. 443.

One M, who was the certificated guardian of H, mortgaged, as his own, a house to A.A brought a suit for sale against M. M as the certificated guardian of H, made an application that H, might be made a defendant. That application was granted and H made a defendant under the guardianship of M. The suit was decreed, property sold and purchased by respondent. H then brought the suit for possession of the house on the ground that he was no party to the decree, not having been properly represented in that suit.

Held that M was not a fit person to be appointed a guardian *ad litem* and as he did not effectively defend the interests of H and allowed a decree by default to be passed, H could not be deemed to have been properly represented in the previous suit. The provisions of S. 443 of the C.P. Code are imperative and a Court has

Guardian and Ward.—(Concluded).

no jurisdiction to pass a decree against, or to sell property of, persons, who are not parties to proceedings or properly represented on the record. **Hanoman Pershad v. Muhammad Ishaq**, 2 A.L.J. 615 = A.W.N. (1905), 229 = 28 A. 187.

STANLEY, C.J. and BURKITT, J.

References.—9 C.W.N. 201 (P.C.) = 2 A.L.J. 7 = 32 I.A. 23 = 7 Bom. L.R. 1 Appl. 30 C. 1021, *Distd.*

(3)—Joint Hindu family—Guardian of the property of the minors.

A guardian of the property cannot be appointed for a minor, whose only proprietary interest is as co-parcener with adults in joint family property. This principle does not apply where all the co-parceners are minors and a guardian of the property is appointed for the whole number. **Bindajee Laxuman v. Mathurabal**, 7 Bom. L.R. 809 = 30 B. 152.

JENKINS, C. J. and ASTON, J.

Reference :—1 Bom. L. R. 822, commented upon.

(4) Compromise by guardian on behalf of his minor ward—Decree against the minor—Suit to set aside the decree on the ground of fraud—Maintainability of—See CIV. PRO. CODE, No. 245, 3 C.L.J. 119.

(5) The *Karta* of a joint Hindu family, who is also the certificated guardian of a minor member of it, can make a mortgage of the joint family property so as to bind his minor ward as well—See HINDU LAW (JOINT FAMILY), No. 4, 3 C.L.J. 12.

(6) Lease by guardian in excess of his powers—Sale by minor on attaining majority—Necessity for purchaser's setting aside lease—See ACT VIII of 1890 (GUARDIANS AND WARDS), No. 13, A. W. N. (1905), 176 = 2 A.L.J. 507.

(7) Right of guardianship—Hindu Law—Competition between outcasted mother and paternal grandfather in caste—See ACT XXI of 1850 (CASTE DISABILITIES REMOVAL), No. 1, A. W. N. (1905), 205.

(8) Order absolute for sale—Guardian dead—Effect of non-service of notice—See TRANSFER OF PROPERTY ACT (IV of 1882), No. 78, 2 A.L.J. 640.

See, I, 457, 458, 459.

Guardian and Wards Act (VIII of 1890.)

See under ACT VIII of 1890.

See, also, I, 459-463.

Hereditary Villages offices Act(Madras).

SEN ACT III OF 1895 MADRAS.

High Court.

- (1) *High Court (Madras) Rule 105*—Two appeals to lower appellate Court and one decree—Plurality of second appeals to High Court.—Practice—Procedure.

There were two appeals to a District Court from the original decree of a District Munsiff. The District Court passed only one decree on both appeals. It was now contended that there should be two second appeals to the High Court on the ground that there were two appeals to the lower appellate Court. *Held*, that High Court Rule, 105, lays down the practice, that, when there are two appeals from the same decree, they should if possible, be heard together and only one decree passed, that only one second appeal should be entered and that even if two appeals had been entered, the proper course would be to hear them together and pass one decree. *Gangulakurti Sanyasi Lingam v. Nidugonda Gavaramma*, 16 M.L.J. 411.

BODDAM and SANKARAN NAIR, JJ.

Reference :—26 M. 97, R.

- (2) power of superintendence of the—of Bombay over the Court of the Resident at Aden—See LETTERS PATENT(BOMBAY), No. 3, 3 C.L.J. 5.

- (3) Power of, to interfere on revision, when remedy by appeal is open—See CIV. PRO. CODE, No. 338, 3 I.B.R. 131.

See, also, I, 464, appeal (Second appeal), No. 2, Civil Pro. Code, Nos. 43, 99, 313, 325; Practice (Misc. cases), No. 5, and Solicitors Lien, No. 1.

High Court Rules (Bombay).

Rule 80 (Civil circulars)—Construction of,—Application for execution not accompanied by copy of decree. See LIMITATION ACT, No. 140, 8 Bom. L.R. 892.

High Court Rules (Calcutta).

Rule No. 70—See ACT XV OF 1882 (PRESIDENCY S. C. COURTS), No. 1, 3 C.L.J. 199.

Rule No. 748—See I, Evidence Act, No. 16.

High Court Rules (Madras).

Application of Rule No. 2—See ACT VII OF 1870 (COURT FEES), No. 3-a, 1 M.L.T. 412,

High Court Rules (N.W.P.)

Nos. 2, 180, 182, 183 and 197—See LETTERS PATENT (N.W.P.), No. 2, 3 A.L.J. 592.

High Way.

- (1) Obstruction to—necessity of special damage for cause of action—exception when plaintiff is owner of soil of highway.

The general rule is that a person cannot maintain an action against another for obstruction to a highway unless some special damage has accrued to him (a). This rule, however, has no application where the plaintiff is the owner of the soil of the highway. His ownership is subject to the right of the public to use the highway. But any use of the soil of the highway other than the legitimate use of it for the purposes of highway is a trespass upon the soil for which the owner can sue, even without proof of special damage. *Bhukan Lal v. Mir and Jagia Rao*, 2 N.L.R. 110.

DRAKE-BROCKMAN, J.C.

References.—(a) 7 C.P.L.R. 97 and 9 M. 463 R; 31 C. 839 and 10 A. 553. R.

Hills.

See, I, 464.

Hill Tracts.

See I, 465.

Hindu Law.

- 1.—GENERAL.
- 2.—ADOPTION.
- 3.—ALIENATION.
- 4.—CENOMONIES.
- 5.—DAYABHAGA.
- 6.—DRETS.
- 6-a.—DIVORCE.
- 7.—FATHER AND SON.
- 8.—GIFT.
- 9.—GUARDIANSHIP.
- 10.—IMPARTIBLE ESTATE.
- 11.—INHERITANCE.
- 11-a.—JAINS.
- 12.—JOINT FAMILY.
- 13.—LEGITIMACY.
- 14.—MAINTENANCE.
- 15.—MANAGER.
- 16.—MARAKATAYAM LAW.
- 17.—MARRIAGE.
- 18.—PARTITION.

Hindu Law.—(Continued).

- 19.—PRE-EMPTION.
- 20.—RELIGIOUS ENDOWMENTS.
- 21.—RELIGIOUS MATTERS.
- 21-a.—RE-MARRIAGE.
- 22.—RE-UNION.
- 22-a.—RESTITUTION OF CONJUGAL RIGHTS.
- 23.—REVERSIONERS.
- 23-a.—SCHOOLS OF LAW.
- 24.—SELF-ACQUISITION.
- 25.—STRIDHAN.
- 26.—SUCCESSION.
- 27.—TEXTS.
- 28.—TRUSTS.
- 29.—WIDOW.
- 30.—WILL.
- 31.—WOMAN'S ESTATE.

———1.—(General).

Kutchi Memons governed by—succession—Rights of sons—See KUTCHI MEMONS, No. 1, 30 B, 270.

———2.—(Adoption).

- (1) *Payment of money to the natural father in consideration of his giving his son in adoption, effect of, on validity of adoption—kritrima son—*

The point for determination in this appeal was, whether the plaintiff was, as found by the Subordinate Judge, the adopted son of the defendant. The oral evidence established beyond doubt the necessary gift and acceptance accomplished by the usual ceremonies. That the plaintiff ever since the adoption lived away from his natural home and as a member of the defendant's family was equally well established. On behalf of the defendant, it was contended that, in spite of all the above circumstances, it should be held in point of law, there was no valid affiliation of the plaintiff as the defendant's son for the reason that the natural father of the plaintiff was induced to part with him in consideration of the payment of a sum of money by the defendant to the natural father. On the question, whether such payment to the natural father would invalidate the adoption: *Held*—Though the promise to pay or the payment of money for the purpose of inducing a man to part with his son to another cannot but be reprobated, yet, to lay down that the adopted son's status itself is affected thereby

Hindu Law.—(Continued).**———2.—(Adoption).—(Continued).**

would be to confound the legal effect of the gift and acceptance with prohibition of payment of money (a). The view that such payment to the natural father would invalidate adoption would result in visiting with highly injurious consequences on innocent third party, for, persons given in adoption are almost invariably children incapable of protecting themselves in the matter and moreover the view taken by the judicial committees in *Bashba Rabidat Singh v. Indra Kunwar* (b), in regard to an improper condition subject to which adoption takes place is in favour of the conclusion that the validity of the adoption is unaffected by the payment in question. *Murugappa Chetti v. Nagappa Chetti*, 16 M.L.J., 22=29 M. 161.

SUBRAHMANYA AYYAR, OFFG. C.J. and SANKARAN NAIR, J.

References.—(a) L.R. 4 I.A. 14 and 22 B. 199, *Refd. to.* (b) 16 C. 559, *Refd. to.*

- (2) *Custom—Purbia Kurmis.*

Held that Purbia Kurmis, calling themselves Purbia Chatteries, do not really belong to the regenerate classes, and therefore the adoption by a member of this caste of the grandson of his father's sister is not invalid as being within the prohibited degrees of relationship. *Jhansi Lal v. Kallu Mal*, A. W. N. (1905), 285 A. 170.

STANLEY, C.J. and BURKITT, J.

- (3) *Wajib-ul-ars—construction—gift to an adopted son—failure of adoption, effect of—Evidence Act (I of 1878), Ss. 43, 48—entries in evidence.*

A clause in a *wajib-ul-ars* verified by one Dhanuraj, a Marwari Brahman, the sole owner of the village, ran as follows:—"Seven years ago I adopted my sister's son, Murl. He is my heir and will be the owner. If after this agreement, a son is born to me, half the property will be received by him and half by the adopted son. A sharer shall be at liberty to adopt his sister's son or brother's son or daughter's son, whomsoever he may like, and, after his death, his adopted son will inherit his property."

Held, that it was the intention of Dhanuraj to give his property to Murl Dhar, as his adopted son, capable of inheriting by virtue of adoption, and that, the adoption being invalid according to Hindu Law, and no family custom

Hindu Law.—(Continued).**2.—(Adoption).—(Continued).**

having been proved, it gave Muri Dhar no right to inherit and the gift had no effect upon the property (a).

Entries made in the *wajib-ul-arz* are admissible in evidence under S. 35, Evidence Act, in order to prove a family custom of inheritance or under S. 43 as the record of opinions as to the existence of such custom by persons likely to know of it. *Musammatt Lall v. Muri Dhar* 8 A. L. J. 415 (F. C.) = 10 C. W. N. 730 = 8 Bom. L. R. 403 = 3 C. L. J. 594 = 1 M. L. T. 171 = 28 A. 488.

LORD DAVEY, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

References.—(a) 26 I. A. 153 and 19 A. 16, 11 19 I. A. 101 and 3 I. A. 253, D.

(4)—Direction to adopt from a family—After born sons—Validity of—

According to all schools of Hindu Law, a widow may adopt with the assent of her husband. The assent may be given either orally or in writing. When it is given, it must be strictly pursued. She cannot be compelled to act upon it until, she chooses to do so, and, in the absence of any direction to the contrary, there is no limit to the time within which she may exercise the power conferred upon her.

One B directed his widow to adopt a boy from a certain family. There were four boys in the family at the time when the authority was given but the widow adopted a boy born in that family some time after the death of her husband. Held, that the direction was sufficiently complied with by the adoption of the boy, who was of more suitable age for affiliation than his brothers. *Mutsaddi Lal v. Kundan Lal*, 3 A. L. J. 246 (F. C.) = 1 M. L. T. 98 = 8 Bom. L. R. 371 = 16 M. L. J. 174 = 28 A. 377..

LORD MACNAGHTEN, SIR FORD NORTH, SIR ANDREW SCOBLE, SIR ARTHUR WILSON.

(5) Conditional adoption.—Conditions made by the adopter with the natural parent of the adopted boy—Conditions not valid and binding on the adopted boy.

An adopted son is not bound by an agreement, made on the occasion of his adoption between his natural parent and adoptive mother, whereby the latter is enabled to give away immovable property that would otherwise have come to

Hindu Law.—(Continued).**2.—(Adoption).—(Continued).**

him as adopted son. *Yenkappa Timappa v Fakirgoda, Govindgoda*, 8 Bom. L. R. 346.

JENKINS, C.J. and ASTON, J.

(6) Adoption by widow under husband's authority—Second adoption, validity of—restrictions to widows power—Intention—Spiritual benefit, how secured—Continuation of line—Law in Madras, Bombay and Benal.

A Madras Brahmin died intestate and without issue, giving his widow authority to adopt. He placed no specific limitation on the power to adopt, his object being to secure spiritual benefit to himself, and to continue his line. The first child adopted by the widow having died when little more than two years of age.

Held—That the widow's authority to adopt was not exhausted by the first adoption and the adoption of a second boy after the first died was valid (a).

The main factor for consideration in these cases is the intention of the husband. Any special instructions which he may give for the guidance of his widow must be strictly followed. Where no such instructions have been given, but a general intention has been expressed to be represented by a son, effect should if possible be given to that intention.

The Ramnad case as (b) indicating limitations to the application of the above rule.

Surendra Nandan v. Sallaja Kant Das Mahapatra (c) and the judgment of Mitter, J. (d) *Kannappa v. Suryanarayana v. Pucha Venkatramana*, 10 C. W. N. 921 (F. C.) = 4 C. L. J. 171 = 16 M. L. J. 276 = 1 M. L. T. 260 = 8 Bom. L. R. 700 = 3 A. L. J. 702 = 20 M. 382.

LORD MACNAGHTEN, SIR ANDREW SCOBLE SIR ARTHUR WILSON and SIR ALFRED WILLS.

References.—(a) S. D. A. 332, adversely commented on and not F. (b) 12 Moo. I. A. 397 at p. 443, R. (c) 18 C. 385 and (d) 22 W. R. 127, Appr:

(7) *Nidadarole* estate, whether partible—authority to adopt given jointly to two widows of last male owner—whether survivor of the two could make the adoption—effect of adoption in divesting estate—adoption made under coercion, whether void or voidable.

Hindu Law.—(Continued).**—2.—(Adoption).—(Continued).**

The last male owner of estate N, died leaving as his only heirs, two widows, and leaving a will authorising them (the widows) to adopt a son to him. One of the widows since dying, the surviving widow adopted a boy who was then the sole owner of estate M; and the adoptee and the adoptive mother, also having died since, a reversioner, laying a claim to estate M, brought a suit questioning the validity of the adoption and urging that, even if it was valid, the adoptee was divested of all interest in M and that he (plaintiff) was therefore, entitled to a portion of the estate M.

The questions for decision were (1) whether the estate N was impartible (2) whether the will and the authority to adopt were genuine and valid and (3) whether the adoption was invalid on the ground of the widows being coerced into making it by a threat of criminal prosecution.

Held, (1) on evidence that neither the family nor the Government regarded the estate as impartible. In re-granting the estate to its proprietor after a forfeiture, the Government did not express any intention to interfere with the quality of the estate in regard to its partitionability or descendibility. In accordance with the principle laid down in the Hansapur case (a) and the Sivaganga case (b), if the estate was all along partible, forfeiture and re-grant could not affect that quality of the estate (c); and that, therefore, the Nidadavole estate is partible.

(2) *Held*, also, that the will was genuine; that the authority to adopt, even though granted to the two widows jointly, was valid (d); that such authority, having been given without restrictions, was tantamount to a grant to each of them: that the same was not exhausted on the death of one of them and that, consequently, the adoption by the survivor was valid.

In reply to the objection that the adoption was void as having been made under threat, it was held that, where no felony had been actually committed, the threat of a criminal prosecution for the same could not amount to the stifling of a criminal prosecution and that, though the coercion to which the widow was subjected might have justified her in repudiating the adoption, yet, as she did not repudiate it, but, always maintained its validity, the coercion could not invalidate it. *Held*, also on a con-

[Hindu Law.—(Continued).**—2.—(Adoption).—(Continued).**

sideration of the texts that the adoption of the adoptee into the Nidadavole family did not operate in law to divest him of his rights in the M estate, there being nothing in the texts which necessarily carried with it the idea, that the adopted son might be divested of property which was his own absolutely at the time of adoption (e).

Semble:—Evidence of experts on matters of Hindu Law (not being foreign law) is inadmissible. **Narasimha Appa Row v. Rangayya Appa Row**, 16 M.L.J. 178 = 29 M. 437.

DAVIES and BENSON, JJ.

References.—(a) 12 M.L.A. 33, R. (c) 17 I.A. 134 (144); 24 M. 606 and 229, R. (d) 23 M.L., R. (e) 10 C.W.N. 121 and 5 C. 776, R.

(8) Adoption by widow—Suit by presumptive reversioners to declare adoption invalid—How far decree binding on other reversioners—See HINDU LAW (REVERSIONERS), No. 3, 1.M.L.T. 183 (F.B.)

(9) Adoption by mother after the death of son and son's widow, if valid—Adoption power of, when comes to an end and becomes incapable of execution.

An adoption by a Hindu widow, who has succeeded by heirship in her character as mother to her son, after his death and the death of his widow, is invalid according to Hindu Law.

A left a widow and an adopted son, and gave authority to the widow to take three sons successively in adoption, one after the death of another. The adopted son married and died leaving a childless widow, who succeeded to the estate. Upon the death of the widow of the adopted son, the widow of the original owner succeeded to the estate and took a second son in adoption:

Held, that the second adoption was invalid in as much as the power of adoption came to, an end and became incapable of execution when the estate vested in the widow of the first adopted son, and that such vesting was a proper limit to the exercise of the power.

The power was not revived upon the death of the widow of the first adopted son. **Manikya-mala Bose v. Nanda Kumar Bose**, 4 C.L.J. 357 = 11 C.W.N. 12 = 38 C. 1306.

MACLEAN, J. MOCKESJEE and HOLMWOOD, JJ.

Hindu Law.—(Continued).**2.—(Adoption).—(Concluded).**

References:—10 M.I.A. 279, 8 I.A.229, 14 I.A.67 and 16 I.A.166, *Appl.* 17 B. 164 and 20 B. 526, *Appr.* 7. W.R. 892, *Diss.* 17 C. 518, *Distd.* 22 W.R. 121 4 C.L.J. 171 = 10 C.W.N. 921, *Expl & Dist.*

(10) Right of adopted son in the Sialkot District among Chima Jats to succeed collaterally to adoptive father's relatives—See CUSTOMS (PECULIAR TO PUNJAB), No. 2, 4 P.R. 1106.

(11)—See INTEREST, No. 3, 3. C.L.J. 502.

See, also, I, 468-472; Appeal (Second), No. 1; Civ. Pro. Code, No. 233; Hindu Law (Reversioners), No. 9, 16, and Hindu Law (Wills), No. 13.

3.—(Alienation).

(1)—of undivided family property by father—Son's share when bound—See HINDU LAW (JOINT FAMILY), No. 7, 1 M.L.T. 28.

(2) Alienation of debutter property by father and uncle in a joint Hindu family—Right of a member of the family to question the—and recover the property—See HINDU LAW (RELIGIOUS MATTERS), No. 2, 38 C. 507.

(3)—by Hindu Widow—Legal necessity, consent of reversioners how far evidence of—See HINDU LAW (Reversioners), No. 2, 9 O.C. 104.

(4) Power of Hindu Widow to grant permanent lease—Benefit to the estate—See HINDU LAW (WIDOW), No. 2, 58 C. 842.

(5)—by widow—Suit by reversioner to recover property—Limitation—See LIMITATION ACT, No. 55, 8 Bom. L.R. 675.

See, also, I, 472-474, Custom (Punjab), Nos. 22 and 23; Hindu Law (Impartible Estates), No. 1; Hindu Law (Reversioners), No. 2; Hindu Law (Wills), No. 2 and Hindu Law (Widow), No. 11.

4.—(Ceremonies).

Expenses for—to be set apart in a partition—See HINDU LAW (PARTITION), No. 4, 8 Bom. L.R. 692.

See, also, I Hindu Law (Jains), No. 1.

5.—(Dayabhaga).

(1) Father and son governed by—Improvement of ancestral dwelling-house by son in father's lifetime—Absolute control of father—Mis-

Hindu Law.—(Continued).**5.—(Dayabhaga).—(Concluded.)**

conduct of son—Father's right to eject son—Injunction restraining son from trespassing—Estoppel.

A son of a Hindu, governed by the Dayabhaga Law, out of his own earnings, made additions and improvements to the family dwelling house, being allowed and encouraged by his father to spend large sums of money for that purpose. Subsequently, the son began to abuse and ill-treat the father and to behave in such a manner as practically to destroy the peace of the family. In a suit by the father to eject the son from the house and for an injunction restraining him from trespassing therein :

Held—that the father had absolute control of the family property, notwithstanding the improvements effected by the son, and was not estopped from suing to eject the son, and was further entitled to an injunction restraining the son from entering into the house (a). **Dharma-das Kundu v. Amulya Dhan Kundu**, 10 C. W. N. 765 = 33 C. 1119.

RAMPINI and MOOKERJEE, JJ.

References.—(a) Morton 90 (1831) 2nd edition by Montrieux, p. 586, L. R. 26 I. A. 58 = 21 A. 496, 1 A. 77, R. 22 Times L. R., 195 (1905), *not F.*

(2) Presumption of jointness in Dayabhaga families—Onus—See HINDU LAW (JOINT FAMILY), No. 14, 4 C. L. J. 56.

6.—(Debts).

(1) Joint Hindu family—suit against father and son on promissory note given by father—Son exempted from liability on note—Liability of son as member of a joint family.

In a suit brought against father and son in a joint Hindu family upon a promissory note executed by the father alone, the son was exempted from liability on the note on the ground that he was no party to it : in other words the suit as against the son was dismissed. A decree, however, was passed against the father, and in execution thereof the decree-holder's assignee caused a portion of the joint family property to be sold. *Held*, on suit by the son for a declaration exempting his interest in the joint family property, that the dismissal as against him for the suit on his father's promissory note left him still liable as a Hindu son to pay his father's

Hindu Law.—(Continued).**6.—(Debts).—(Continued).**

debt unless—which not suggested here—the debt was tainted with immorality. *Shiam Lal v. Ganesh Lal*, A.W.N. (1906), 33 = 3 A.L.J. 10 = 28 A. 288.

STANLEY, C.J. and BURKITT, J.

(2) *Son's liability to pay father's debts—Immoral or illegal purposes.*

Hindu sons are not compellable to pay moneys due by their father for spirituous liquor, for losses at play, for promises made without any consideration, or under the influence of lust, nor generally any debt for a cause repugnant to good morals. *Semble*—Where specific proof of the expenditure in immoral pursuits of all the moneys borrowed by the father is not given, but specific instances are shown of the application of large sums of money in payments made to prostitutes and in the purchase of liquor and general evidence of the father's immoral habits is tendered, it may reasonably be inferred that the debts were tainted with immorality.

The proposition laid down in the case of *Surya Bansi Koer v. Sheo Prasad Singh*, L.R. 6 I.A. 88, that, where joint ancestral property has passed out of a joint family under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of the decree for the father's debt, his sons cannot recover that property unless they show that the debts were contracted, for immoral purposes, and the purchasers had notice that they were contracted, applies to a case in which joint ancestral property has passed out of the family and sons are endeavouring to recover it. But, in a case in which a creditor is endeavouring to establish a claim under a simple hypothecation bond given by a Hindu father, having a limited interest only, against his son, it appears not unreasonable to require proof, on the part of the creditor, that, before he entered into the transaction, he at least made such reasonable enquiries as would satisfy a prudent lender that the money was required to pay off an antecedent debt or for the legal necessities of the family. Assuming, however, that the *onus* does lie on a Hindu son under such circumstances of proving that the loan made to his father was for an illegal or immoral purpose, there is no additional *onus* thrown upon him showing that the lender

Hindu Law.—(Continued).**6.—(Debts).—(Continued).**

know of the immoral purpose for which the debts were being contracted.

Semble—That their Lordships of the Privy Council in the case of *Nanomi Babuasin v. Madhun Mohan*, L.R., 13 I.A. 1 did not intend to extend the rules laid down by their Board in the earlier cases, and, by "creditors" remedies for their debts meant merely to denote the remedies which the law gives to creditors when completed by suit, decree, and execution.

The principles laid down in the case of *Hu-nooman Persand Panday*, 6 M.I.A. 393, apply equally to fathers when managing property governed by the Mitakshara Law. (a)

In investigating the nature of the father's debts, which are sought to be enforced against the sons, not the debt alone which is the subject-matter of the suit, has to be looked to, but also the nature of the debt for the payment of which that debt was contracted. If the Court is not entitled to investigate the indebtedness in its inception, the rule of law, which protects Hindu sons from the payment of immoral debts of their father, would be readily defeated and be in fact illusory (b).

Query—Whether a disburthening ordinance in favour of Hindu sons in respect of their father's debt is not desirable. *Maharaj Singh v. Raja Balwant Singh*, 3 A. L.J. 274 = A.W.N. (1906), 117 = 28 A. 508.

STANLEY, C.J. and BURKITT, J.

References.—(a) 9 A. 493 and 24 A. 459, considered. (b) 6 M.H.C.R. 37, R.

(8) *Stifling of prosecution—Tort—Securities obtained from a Hindu debtor—Duty of a Hindu son.*

The giving by a Hindu debtor of security to his creditor for the payment of a just claim cannot, from any point of view, be regarded as an illegal or immoral debt for which his sons would not be liable. In all offences which involve damages to an injured party for which he may maintain an action, it is competent for him, notwithstanding they are also of a public nature, to compromise or settle his private damage in any way he may think fit. A man to whom a civil debt is due may take securities for that debt from his debtor, even though the debt arises out of a criminal offence, and he threatens to prosecute for that offence provided

Hindu Law.—(Continued).**6.—(Debt).—(Concluded).**

he does not in consideration of such securities agree not to prosecute; and such an agreement will not be inferred from the creditor using a strong language. *Jai Kumar v. Gauri Nath*, 8 A.L.J. 506=A.W.N. (1906), 212=28 A. 718.

STANLEY, C.J. and KNOX, J.

References.—72 B.R. 29, at p. 811, 10 Q.B. D. 572, and 11 B. 566, R.

(4) *Mitakshara school*—*Decree for mesne profits against father*—*Debt not illegal or immoral*—*Son's pious obligation to pay*.

Under the Mitakshara, a son is under a pious obligation to discharge a decree for mesne profits obtained against his father by a person whom the latter wrongfully kept out of possession of immoveable property. *Peary Lal Sinha v. Chand Charan Sinha*, 11 C. W. N. 168.

RAMPINI & MOOKERJEE, JJ.

(5) Existence of antecedent debt, necessity of, to bind son's share of undivided family property alienated by father—See HINDU LAW (JOINT FAMILY), No. 7, 1 M.L.T. 28.

(6) Sale of ancestral property by father with no antecedent debts, suit by sons to set aside—See HINDU LAW (JOINT FAMILY), No. 1, A. W. N. (1906), 40.

(7)—of last holder of impartible estate how far binding on successor—See HINDU LAW (IMPARTIBLE ESTATE), No. 3, 16 M.L.J. 889.

(8) Father's failure to discharge debt, son's liability on, arises from the time of such failure—See LIMITATION ACT XV OF 1877, No. 80, 9 O.C. 350.

(9) Joint family—money-decree against father—death of father before attachment, effect of—See HINDU LAW (JOINT FAMILY), No. 18, 3 A.L.J. 686.

See, also, I, 474-477, Decree, No. 25 & Hindu Law (Joint Family), Nos. 3 and 6.

6-a.—(Divorce).

See, I, Hindu Law (Inheritance), No. 4.

7.—(Father and Son).

(1) *Dayabhaga*—improvement of family-house by son out of his earnings at the request of father—Rights of son in the house—Father's right to eject son and obtain an injunction—See HINDU LAW (DAYABHAGA), No. 1, 10 C.W. N. 766.

Hindu Law.—(Continued).**7.—(Father and Son).—(Concluded).**

(2) Father giving security for a just and lawful debt—son's liability to pay father's debt—See HINDU LAW (DEARA), No. 3, 3 A.L.J. 506.

8.—(Gift).

Delivery of possession, whether necessary to complete—See PRE-EMPTION, No. 26, 45 P.R. 1906.

See, also, I, 477-480; Custom (Punjab), Nos. 17 and 18, Hindu Law (Joint Family), No. 5; Hindu Law (Stridhan), No. 3 and Hindu Law (Wills), No. 13.

9.—(Guardianship).

(1) Power of Hindu father to appoint a guardian for his minor son under a will—See CIV. PRO. CODE, No. 288, 8 Bom. L. R. 522.

(2) Right of guardianship—Competition between outcasted mother and paternal grandfather in caste—See ACT XXI OF 1850 (CASTE DISABILITIES REMOVAL), No. 1, A.W.N. (1906), 205.

10.—(Impartible Estate).

(1) *Impartible property, devolution of—Impartible estate, right of succession to, of nearest co-parcener of senior line—Impartibility, incidents of, continuance of—Pollimas—Poligars—Primogeniture—Succession—Maintenance, amount of—Judicial Committee, practice of—*

When impartible property passes by survivorship from one line to another, it devolves not on co-parceners nearest in blood but on the nearest co-parcener of the senior line (a).

It is not the practice of the Judicial Committee to interfere with the decision of the Courts to India upon a question as to the amount of maintenance to be paid to a member of a Hindu family, when he is shown to be entitled to such maintenance.

History of *Pollimas* and their incidents examined.

A *Polliam* is in the nature of a *Raj*; it may belong to an undivided family, but it is not the subject of partition: it can be held only by one member of the family at a time, who is styled the *Poligar*, the other members of the family being entitled to maintenance or allowance out of the estate (b).

Hindu Law.—(Continued).**—10.—(Impartible Estate).—(Continued).**

The question, whether an estate is subject to the ordinary Hindu Law of succession or descends according to the rule of primogeniture must be decided in each case according to the evidence given in it (c).

The acceptance of a *sanad* in common form under Madras Regulation XXV of 1802, does not of itself and apart from other circumstances, avail to alter the succession to an hereditary estate.

Where it was found that the estate of the Udayarpoliem Poligars was, in its origin, impartible, and after cession of the Carnatic to the Company was for political reasons circumscribed in extent and was converted into a Zemindari, which was granted and accepted as equivalent in value to the ancient *Polliam*, it was held that the character of impartibility was not changed and the Zemindari must be regarded as impartible and descendible according to the rules of primogeniture. **Kachi Kaliyana Rungappa Kalakka Thola Udayar v. Kachi Yuva Rungappa Kalakka Thola Udayar**, 2 C.L.J. 231 (P.C.) = 10 C.W.N. 95 = 15 M.L.J. 312 = 2 A.L.J. 845 = 7 Bom. L.R. 907 = 1 M.L.T. 12 = 32 I. A. 261.

LORD MACNAGHTEN, SIR FORD NORTH, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

References.—(a) 4 M. 250, *Appr.* (b) 2 M. I.A. 66, *F.* (c) 17 I.A. 134, *F.*

(2) Zemindari of Nidadavole, partible or impartible—See **HINDU LAW (ADOPTION)**, No. 7, 16 M.L.J. 178.

(3) *Debts contracted by the last Zemindar, neither for family purposes nor for the use of the Zamin—Zemindari, how far assets for paying such debt in the hands of a succeeding Zemindar—Succession of undivided brother Survivorship.*

Suit to recover the amount due under a promissory note executed by the late Zamindar of M, an impartible Zamindari. The 1st defendant was the undivided brother and successor of the late Zamindar and the 2nd defendant was his widow. The debt was not contracted for family purposes or for the use of the Zamin. Plaintiff contended that, as the Zamindari was impartible, it was not joint family property, but that it was the property of the late Zamindar and liable, therefore, in the hands of the 1st defendant, his

Hindu Law.—(Continued).**—10.—(Impartible Estate).—(Continued).**

heir, for payment of his debt irrespective of the nature of such debt. *Held*, although the predecessor had complete power of alienation over the Zamin, yet his undivided brother must be taken to have succeeded him by right of survivorship and hence the Zamin must not be treated as assets in his hands for payment of his predecessor's debts. *Per SANKARAN NAIR, J.*—If the impartible Zamindari is the separate property of any member of the family, it will go to his widow, if sonless, and not to any co-parcener [*Sivaganga case*, 9 I. A. 539 (614)].....The widow's claim can only be postponed to a claim by survivorship..... It is the nature of the property that determines the succession. It is the community of interest in the property in dispute and the unity of possession, so far as such property is concerned, that is the foundation of the right to take by survivorship. It is true that their Lordships (of the Privy Council) have not explained how there can be any survivorship when there is neither co-parcenary nor joint-tenancy, but we cannot, for that reason, hold against the express decisions of the Privy Council, that the 1st defendant did not take by survivorship. Otherwise, he cannot exclude the widow, the second defendant.... The survivorship, as a rule, governing the law of succession to an impartible estate is only a survival from a theoretical co-parcenary.

Obiter. A peculiar mode of devolution of ownership may make it subject to exceptional incidents of property, and when the acquisition or recognition of ownership is due, by a process of evolution, to a series of decisions, such ownership may carry with it certain incidents appropriate to it in its earlier stages, but from which rights of ownership acquired in wellknown and recognized modes are free.

Illustrations of this may be found in Hindu, as in English, Law.

Semble. A Hindu widow is at liberty to dispose of the income from her husband's estate. But, if she has not disposed of such income, it becomes a part of the husband's estate, goes to his heirs and ceases to be available to satisfy her debts. **Nachiappa Chettiar v. Sivasubramaniapandia**, 6 M. L. J. 389 = I.M.L.T. 272 = 29 M. 453.

MOORE and SANKARAN NAIR, JJ.
References:—10 A.272, 22 M. 383, 9 M.I.A. 5-30 (614) 13 M.I.A. 140 & 18 C.151, R.

Hindu Law.—(Continued).**10.—(Impartible Estate).—(Concl'd.)**

(4) *Interest acquired by purchaser at sale, in execution of decree, of an impartible estate in 1883.*

Plaintiff sought to recover possession of the *Bagalur Poliem*, which was sold in execution of a mortgage decree obtained against his father, the late Polingar. He contended that the *poliem* was impartible and inalienable and that, even if it were alienable, the sale did not extend to more than "the right, title and interest" of the late Polingar, that those words must be construed with reference to the law as it was then understood to be, and that, therefore, only the life interest of the late Polingar was sold.

Held, that, as the mortgaged-debt was such as would bind the interest of the son, even if the property were ordinary ancestral property of the family, the estate, though impartible, may be sold in execution of a decree upon such a debt; (a) and that what passed to the auction-purchaser was not merely the life interest of the late Polingar, but his entire proprietary interest. **Sreeman Raju Pathayam Veerasurappa Nayamyan v. Errappa Naidu**, 1 M. L. T. 287 = 29 M. 484 = 16 M. L. J. 499.

WHITE, C. J. & BENSON, J.

References :—(a) 6 M. 1 = 9 I. A. 128, F. 10 A. 272, 22 M. 388, 27 M. 131 = 31 I. A. 1, R.

See, also, I, 481-484.

11.—(Inheritance).

(1) *Sridhan property—Marriage of the deceased female in unapproved form—sister preferable to—Sisters son as heir.*

The house in dispute in this case was the absolute property of one T deceased descendible as her *stridhanam* in the general sense of the term according to the *Mitakshara*. **Held**, that as T had not been married in any of the approved forms, her father's kinamen were to succeed to her property and of them plaintiff, the sister of T, was entitled to succeed in preference to the defendant, the plaintiff's son, since plaintiff, as the daughter of T's father, took precedence over the defendant, his daughter's son. **Raju Gramany v. Ammani Ammal**, 1 M. L. T. 68 = 29 M. 358.

SUBRAHMANIA AYYAR and BENSON, JJ.

(2) *Mitakshara—Competition between great grand-father's daughter's son and sister's daughter.*

Hindu Law.—(Continued).**11.—(Inheritance).—(Continued).**

Where there is a competition between the great grand father's daughter's son and a sister's daughter, the former succeeds as preferential heir, he being a *bandhu* of the *propoitus*, under the *Mitakshara* School of Hindu Law, and the latter not being entitled to succeed even as a *bandhu*. **Mangat Ram v. Devi Chand**, 20 P. R. 1906 = 69 P. L. R. 1906.

ROBERTSON and RATTIGAN, JJ.

References.—11 M. I. A. 386, cited and F. 22 A. 338, 8 M. 107, 18 M. 168, 5 M. 241, 14 M. 140 and 21 M. 263, R.

(3) *Hindu law—Succession—Mitakshara—Right of females to inherit.*

In the case of Hindus governed by the *Mitakshara* law, no females except those expressly named in the *Mitakshara* as heirs can inherit. A grand-daughter therefore cannot succeed to the estate of her grand father. **Jagan Nath v. Champa**, A. W. N. (1906), 13 = 3 A. L. J. 87 = 28 A. 307.

STANLEY, C. J. and BURKITT, J.

References.—3 A. 45; 5 A. 311; A. W. N. (1905), 242 and W. R. Sp. No. 75 (F. B.), F. 22 A. 338; 14 M. 149 and 17 M. 182, dissented from.

(4) *Joint Hindu family—Lunacy.*

A member of a joint Hindu family who has acquired by his birth an interest in the joint family property is not divested of that interest by subsequently becoming insane. **Tirbani Sahai v. Muhammad Umar**, A. W. N. (1906), 265 = 3 A. L. J. 4 = 28 A. 24.

STANLEY, C. J. and BURKITT, J.

Reference.—5 A. 509, F.

(5)—*Mitakshara—Mayukha—Succession to sridhan property of childless Hindu widow—Co-widow preferred to husband's brother and brother's son—"Sapinda" meaning of—Construction of text, rule of—Island of Bombay, succession in.*

Under the *Mitakshara*, as also under the *Mayukha* as read with the *Mitakshara* a co-widow is entitled to succeed to the *stridhan* property of a widow dying without issue, in preference to her husband's brother or brother's son.

According to the *Mitakshara* definition of *sapinda*, husband and wife are *Sapindas* to each other and the same theory has been adopted by the author of the *Mayukha*.

Hindu Law.—(Continued).**———11.—(Inheritance).—(Continued).**

The rule of succession to the *stridhan* property of a childless widow laid down in the *Mitakshara* and adopted in pl. 28 of the *Mayukha*, was not intended to be modified in its operation by what is stated in pl. 90 of the same work.

The proper constructions of the text of *Brihaspati* in pl. 30 indicated. Chama Churn's construction of the text approved (a).

Questions of the Hindu Law of Inheritance to property in the Island of Bombay are to be determined in accordance with the *Mitakshara*, subject to the doctrine to be found in the *Mayukha* where the latter differs from it. But, as a general principle, the *Mitakshara* and the *Mayukha* should be so constructed as to harmonise with one another wherever and so far as that is reasonably possible (b). **Bai Kesserbai v. Hunsraj Morarji**, 10 C.W.N. 808 (P.C.) = 4 C.L.J. 9 = 8 Bom. L.R. 446 = 3 A.L.J. 484 = 1 M.L.T. 211 = 30 B. 431 = 16 M.L.J. 446.

LORD DAVEY, SIR ANDREW SCOBLE, and
SIR ARTHUR WILSON.

References.—(a) 2 B. 388, 17 B. 114, at p. 118, 12 C. 348 and 8 B.L.R. 12, R. (b) 17 B. 141 at p. 118, R.

(6)—*Bandhus—Paternal preferred to maternal—Mitakshara Law.*

Father's brother's daughter's son of the prepositus is a preferential heir to mother's brother's son under the *Mitakshara* Law. **Ram Bharos v. Ram Parshad**, 3 A.L.J. 461 = A.W. N. (1906), 197.

AIKMAN, J.

(7) *Prostitute's estate—Application for letters of administration by natural heir—Right to succeed—Fisheat.*

When persons claiming to be brother's sons of a deceased prostitute applied for letters of administration to her estate—she having acquired the same by carrying on the profession of a prostitute.

Held, (WOODROFFE, J., *dubitante*)—That the application was rightly rejected, inasmuch as the applicants were not entitled to inherit such estate. (a). **Bhutnath Mondol v. Secretary of State for India in Council**, 10 C.W.N. 1085.

RAMPINI and WOODROFFE, JJ.

References.—(a) 7 Sel. Rep. 279, 21 C. 697 and 25 C. 254, F., 23 M. 171, R.

Hindu Law.—(Continued).**———11.—(Inheritance).—(Continued).**

(8) *Mitakshara—Samanodakas—Agnates removed more than 14 degrees—Cognates—Bandhus—Sister's son.*

Held, that under the *Mitakshara*, a person who is removed more than 14 degrees from the common ancestor cannot be considered to be a *Samanodaka* of the deceased, entitled to succeed in preference to the deceased's sister's son who is a *bandhu*. **Mathura Parshad v. Kalka Parshad**, 9 O.C. 239.

SCOTT and WELLS, J. CS.

References.—5 B.L.R. 293, 11 Select Reports p. 12, 2 M.L.A. 182, 9 A. 467 and 10 B. 372, R.

(9) *Leprosy—Disqualification when succession opens out—presumptions as to, disqualification—onus of proof.*

The presumption of Hindu Law is against disqualification, and the burden of proof of disqualification lies on the person who seeks to exclude another, who would be an heir, should no cause of exclusion be established (a).

Where it is contended, that a person is excluded from inheritance by reason of an incurable disease, the strictest proof of the disease will be required (b).

The point of time, with reference to which the existence or absence of disability has to be ascertained, is the time when the succession opens out.

The removal of the disability, subsequent to the opening of the inheritance, does not entitle the affected person to claim the heritage from another, whose title was better than his, while the defect existed though inferior to his own after its removal; and a person, who has already taken by inheritance, does not lose the estate by a subsequent supervening disability (c).

Leprosy, in order that it may disqualify must be of the virulent and aggravated type which is regarded as incurable (d). **Helan Dasi v. Durga Das Mundal**, 4 C.L.J. 328.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 18 W.R. 375, 21 W.R. 249 and 22 W.R. 348, R. (b) 2 W.R. 125, R. (c) 6 W.R. 68, 2 B.L.R. 115 (F.B.) and 22 C. 864, R. (d) 22 I.A. 94 = 22 C. 843, 5 Bom. H.C.A. C.J. 145, 1 B. 584 and 19 M. 74, *relied on*.

(10) *Mitakshara—Illegitimate collateral, succession to the property of—Right of an illegitimate person to inherit.*

Hindu Law.—(Continued).**11.—(Inheritance).—(Continued).**

Held, that under the Hindu Law (*Mitakshara*) an illegitimate person has no right to succeed to the property of another illegitimate collateral. **Bacha Singh v. Chatarpal Singh**, 9 O.C. 352.

GRIFFIN, J.C.

- (11) *Goshain—Girhast—Posthumous chela—Appointment by wife—Community, consent of—effect of.*

A *chela* of a *Goshain* after he has served the *Joti* for a year may be made a *Sat-shishya* (virtuous approved pupil), if the *Joti* thinks him worthy of the honour, and the pupil, who has not become a *Sat-shishya*, can never inherit. A person, who has had no association with his spiritual guide (in this case a *Girhast Goshain*) cannot be his *chela* and, therefore, a posthumous *chela* is a contradiction in terms. The sons of a *Goshain* cannot be excluded from inheriting his property by any *chela*, who may be appointed by his widow after his death.

Clearer evidence of the antiquity of a custom, whereby the sons of the owner of the property are deprived of their right, by the appointment of a posthumous *chela*, is required before legal recognition could be given to it. **Ghahaju Gir v. Diwan**, 3 A.L.J. 717 = A.W.N. (1906), 289.

STANLEY, C.J., & KNOX, J.

References:—14 M.I.A. 71, 14 M.I.A. 570, 28 C. 608 and C. 4 543, *It*.

- (12) With respect to *stridhan* of a Hindu woman, married according to one of the approved forms of marriage, her husband's sister's sons are preferential heirs to her own sister's sons—See HINDU LAW (*STRIDHAN*), No. 2, 3 A. L. J. 85.

- (13) Succession to *stridhan* left by widow—Her co-widow entitled in preference to the grand-children of the brother of her father-in-law—See HINDU LAW (*STRIDHAN*), No. 1, 8 Bom. L. R. 12.

- (14) Under *Dayabhaga* Law, the mother is entitled to succeed in preference to the husband as heir to a childless woman's *Pitridatta Ayautuka Stridhan*—See HINDU LAW (*STRIDHAN*), No. 3, 3 C. L. J. 15.

- (15) Will, construction of—'to my daughters and their respective sons' meaning of, in a will by a Hindu—see Act X of 1865 (*SUCCESSION*), No. 11, 3 C.L.J. 502.

Hindu Law.—(Continued).**11.—(Inheritance).—(Concluded).**

See, also, I, 484-486; Act XV of 1856. (*Imperial*), No. 1 and Custom (*Punjab*), No. 16.

11-a.—(Jains).

See, I, 486.

12.—(Joint Family).

- (1) *Sale of ancestral property by the father with no antecedent debt or valid necessity to support it—Suit by sons to set aside sale so far as affecting their interests.*

A Sale of ancestral property by the father in a joint Hindu family may be set aside on suit by the sons so far as it affects their interests in the property, if there is no antecedent debt or valid necessity to support it, although the transaction may not be shown to be tainted with immorality (*a*). **Ram Dayal v. Ajudhia Prasad**, A. W. N. (1906), 40 = 3 A.L.J. 81 = 28 A 328.

STANLEY, C.J. and BURKITT, J.

Reference.—(a) A.W.N. (1901), 57, *F*.

- (2) *Joint family estate—Separate possession of joint estate by a co-parcener—Rights of purchaser from the co-parcener—Partition—Joint possession.*

No separate possession of any particular portion of undivided family estate can be successfully claimed except in a suit for partition. But though the separate possession claimed cannot be given without partition, in such cases a co-parcener, joint tenant, or tenant-in-common may obtain possession in common with a purchaser, who has obtained separate possession without partition of specific individual property in which such co-parcener has an undivided unascertained share.

Though a joint tenant or tenant-in-common of joint family property cannot obtain exclusive possession of any specific parcel of undivided property, no outsider purchasing from one of the co-parceners is entitled to such exclusive possession as against the other co-owners of any specified parcel of such property. And the purchaser, therefore, cannot by obtaining a possession to which he was not entitled without partition, force on another co-parcener the necessity of bringing a suit for partition. If such co-owner is content with joint enjoyment, the purchaser must either submit to it or himself obtain by partition the specific share which he desires to enjoy separately.

Hindu Law.—(Continued).**12.—(Joint Family).—(Continued.)**

Where the plaintiff asks in his plaint for exclusive possession only he may nevertheless be allowed possession in common. This does not involve any variance with the facts alleged in the plaint, but merely the correct determination of the relief appropriate on those facts being established. The plaintiff merely asked for a relief larger than the facts asserted by him would warrant. That is not a reason for debarring him altogether from any relief to which, on those facts, he is entitled. *Bhiku Ravlu v. Puttu Timappa*, 8 Bom. L.R. 99.

RUSSELL and BATTY, JJ.

- (3) *Mortgage—Rights of sons not born or begotten at the date of execution of a mortgage by their father.*

When a Hindu mortgagor, some years after the date of execution of the mortgage, had several sons born to him, it was held that such sons were not entitled to recover the mortgaged property from the heirs of the mortgagee who had in a suit upon the mortgage brought the property to sale and purchased it himself. *Chattarpal Singh v. Natha*, A.W.N. (1906), 26=3 A.L.J. 38.

BLAIR and BURKITT, JJ.

- (4) *Mortgage by karta—Certificated guardian of minor—Permission from Court, absence of—Decree, whether binding—Parties—defect of—Transfer of Property Act, s. 85—Notice, absence of.*

A mortgage of the property of the joint Hindu family governed by the *Mitakshara* Law, by the *Karta* of the family, who happens also to be the certificated guardian of a minor member of it, is not invalid, because it was made without leave obtained from the Court to make it (a).

A mortgage decree does not fail to be binding upon persons because of their not having been made parties to the suit, if they cannot show that the mortgagee had any notice of their interest (b). *Ram Arta Singh v. Chowdhuri Narsingh Narain Singh*, 8 C.L.J. 12.

MACLEAN, C.J. and MITRA, J.

References.—(a) 25 A. 407=30 I.A. 165 (F.C.), F. (b) 28 C. 517, R.

- (5) *Hindu law—Joint Hindu family—Liability of sons for father's debts—Attachment of ancestral property in life-time of father.*

Hindu Law.—(Continued).**12.—(Joint Family).—(Continued).**

Where in execution of a decree obtained against the father in a joint Hindu family, ancestral property of the family is attached in the life-time of the father, it is competent to the decree-holder after the death of the father to continue execution against the attached property, although he could not have proceeded against the ancestral property in the hands of the sons had the father died before attachment was effected (a). *Bakhtwar Singh v. Brij Mohan Lal*, A.W.N. (1908), 10=3 A.L.J. 127.

BANERJI and RICHARDS, JJ.

References.—(a) 16 A. 449, D. 5 C. 148, R.

- (6) *Hindu law—Joint Hindu family—Ancestral property—Self-acquired property—Property inherited from collateral, acquired after litigation supported by joint family funds.*

The head of joint Hindu family owning a large amount of joint ancestral property acquired by inheritance from a collateral branch of the family property, both movable and immovable, after litigation ending in a compromise. This litigation was carried on by means of money belonging to the joint family business. *Held*, on a finding that the business of the family usually necessitated the existence of a very large floating balance and that the money used for this litigation was in a short time replenished by the head of the family in the family accounts, that there was no appreciable detriment to the ancestral property, and consequently the property, which passed under the compromise above referred to was self-acquired and not ancestral property. *Dachcha Kunwar v. Dharam Das*, A.W.N. (1906), 24=8 A.L.J. 155=28 A. 347.

STANLEY, C.J. and BURKITT, J.

References.—1 I.A. 167 and 3 N.W.P.H.C. R. 217, *Infid.* to.

- (7) *Sale or mortgage by a father of undivided family property—Existence of antecedent debts, whether necessary for binding son's share.*

On a reference, to the Full Bench, of the question whether, in order to justify a sale or a mortgage of joint family property by a father so as to bind the son's share, there must be, in fact, an antecedent debt, i.e., a debt prior to the mortgage or sale. *Held*, that the sale or

Hindu Law.—(Continued).**12.—(Joint Family).—(Continued).**

mortgage by the father would be binding upon the son's share in the family property only in the event of the existence of antecedent debts prior to, and independently of, the sale or mortgage in question. **Kakarla Abbaya v. Raja Venkata Papaya Rao**, 1 M.L.T. 28=16 M.L.J. 69=29 M. 200.

SUBRAHMANYA Aiyar, OFFG. C.J. and **Boddam, J.**

References.—27 M. 326, overruled, 21 M. 28, *Appr.* 20 C. 328 and 24 A. 459, *Diss.* 5 C. 148, 18 C. 21, 15 C. 517 and 17 C. 584, *Refd. to.*

(8) Hindu law—Joint family—Manager—Power of—Guardian and Ward.

A Manager of a joint Hindu family can mortgage the estates of all the members of the family for real family purposes, unless it can be shown that the expenditure has been unreasonably large and marked by gross carelessness. **Harl Chand v. Mansa Ram, Goverdhan Chand**, 18 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

(9) Mitakshara—Decree for sale against father on mortgage—Sale in execution—Sons not parties—Suit of sons for redemption not maintainable.

Where ancestral property has been sold in execution of a decree for sale upon a mortgage obtained against a Hindu father alone, the sons cannot sue the purchaser to redeem their shares of the joint ancestral property. **Lal Singh v. Pulandar Singh**, 2 A.L.J. 647=A.W.N. (1906), 248=28 A. 182.

STANLEY, C.J. and BURKIT, J.

References.—The principle of 25 A. 214, *Appl.*, 1 I.A. 321, *Refd. to*; S.A. 641 of 1909 decided by **BANERJI, J.**, on the 6 August, 1904, *Appr.*

(10) Suit against father and son on mortgage by father—Son exempted—liability of ancestral property in execution of decree against father.

In a suit brought against father and sons in a joint Hindu family upon mortgages executed by the father alone, the suit against the sons was dismissed. Upon ancestral property being attached in execution of the decree against the father, the sons sued for a declaration that the family property was not liable to sale and that, in any event, their interests were not saleable. *Held*, that, the sons having failed to prove that

Hindu Law.—(Continued).**12.—(Joint Family).—(Continued).**

the debt was of such an improper nature that it was not binding on the family property, their interests in the joint ancestral property were liable. **Ohhanu Tiwari v. Dwarka Kuar**, A.W.N. (1906), 187=3 A.L.J. 438.

BANERJI, J.

Reference.—A.W.N. (1900), 38=3 A.L.J. 10, *R.*

(11) Undivided interest of a co-parcener—Right of creditor to seize and sell the—

On the contention, in appeal, in this case that voluntary alienations and sales *in invitum* of a co-parcener's share in undivided ancestral property stand on precisely the same footing and that neither class of transaction is legal unless justified by necessity or validated by the other co-parcener's consent, *held*, provided that the alienation is for value, one co-parcener may dispose, at his pleasure, of ancestral undivided estate by private conveyance to the extent of his own share. As to such right of voluntary alienation, there is a division of opinion between the High Courts, those of Madras and Bombay holding that such alienation, whatever they may profess to convey, are valid to the extent of the alienor's own interest in the property (a) but as to sale *in invitum* it is every where settled law that, in execution of a money-decree obtained against one of the co-parceners of a joint Hindu family for his separate debt, the creditor may, during the life of the debtor, seize and sell such co-parcener's undivided interest in the joint property of the family (b). **Mukund, Ram Sukal v. Ram Ratan**, 2 N. L.R. 52.

DRAKE-BROCKMAN, A. J. C.

References.—(a) 8 C. P. L. R. 64, 3 C. P. L. R. 6 C. P. L. R. 60. (b) 3 C. 198 (P. C.), 4 C. 809, 4 C. 723, *P.*, 5 A. 480 and 25 M. 690, *R.*

(12) Separation—Reunion—Right of reunited member by survivorship.

Held, that a brother who has separated from but again reunited with his father is entitled to succeed to his father's property by survivorship to the exclusion of his own brothers who separated and did not reunite. **Ganesh v. Bhagirath**, A.W.N. (1906), 181.

AKHMAN, J.

(13) Mortgage of family property by a co-parcener—Charge of the mortgage upon the

Hindu Law.—(Continued).**-12.—(Joint Family).—(Continued).**

mortgaged property—Subsequent division of property among the co-parceners—Mortgagee not bound by the partition.

Where a co-parcener in a joint Hindu family mortgages for his own benefit certain specified pieces of land in their entirety, belonging to the joint family, the mortgagee is entitled to a declaration that he has, by his mortgage, a valid charge on the interest of the mortgagor in the specified pieces of land as that interest existed at the date of the mortgage. If after the date of the mortgage, the co-parceners arrive at a division of the family property, the division is not binding upon the mortgagee. **Doddappa Tippanna v. Somappa Ningappa**, 8 Bom. L. R. 550.

JENKINS, C.J. and ASTON, J.

(14) *Partition, suit for—variation of pleadings in course of evidence—Limitation Act (XV of 1877), Sch. II, Arts. 127 and 142—Presumption of jointness in Dayabhaga families—Onus.*

In a suit for partition of joint ancestral properties, the plaintiff alleged that certain properties were acquired by his grandfather who was also the grandfather of the defendants. The case, as made out in the evidence, was that these properties were acquired by the father of the defendants as *Karta* of the joint family with joint funds.

Held, that this did not constitute such a variation of the pleadings as would justify the Court in dismissing his claim with regard to those properties.

That the question of limitation does not arise if the properties are proved to be joint.

That Art. 127 and not Art. 142 of the Act governs a case like this (a).

That, under Art. 127 of the Act, the *onus* is on the defendants to prove that the exclusion from the joint family property became known to the plaintiff more than 12 years before the suit.

That the presumption in Hindu Law, that all properties held by any member of a joint family so long as the family remains joint, are joint property does apply to families governed by the Dayabhaga School.

That the case of *Saroda Prasad Roy v. Mahananda Roy* (b) does not lay down any general proposition contrary to the above.

Hindu Law.—(Continued).**—12.—(Joint Family).—(Continued).**

That the *onus* in the present case was wrongly placed on the plaintiff (c). **Rama Nath Chatterjee v. Kusum Kamini Dabi**, 4 C.L.J. 56.

RAMPINI and MOKERJEE, JJ.

References.—(a) 1 C.W.N. 548, F. (b) 81 C. 448. (c) 9 C. 237, D., 19 W.R. 178 and 22 A. 141, F.

(15) *Debt due to the joint family, whether managing member can sue for, without joining other members as plaintiffs—Plaint amendment of.*

Suit in his own name by the father alone of a joint Hindu family consisting of himself and his sons, some of whom were minors, on a book account of a family partnership business. The father purported to sue in his capacity as managing member. *Held* that, though the authority of the manager of a joint Hindu family enables him, in matters of business, to act for and represent all the members, yet, it does not necessarily import a right, in the manager, to sue alone in his own name (a). Further the money was due, if at all, to plaintiff and his sons jointly, and defendants were therefore entitled to insist that the case shall be so tried, that there may be a final adjudication between them on the one side and their joint promises on the other. The plaintiff therefore could not sue alone and the proper course would be to dismiss the suit and not to amend the plaint and remand for trial *in toto*, or amend and decide the appeal at once, as if the sons had been parties all along. **Rattan Chand v. Ram Parshad**, 60 P.R. 1906=118 P. L. R. 1906.

JOHNSTONE and LAL CHAND, JJ.

References.—(a) 156 P.R. 1889, F., 57 P.R. 1905, 12 P.R. 1905, 23 M. 190 and 8 C. 42, R. 17 M. 122, 25 A. 378, 26 C. 349, *ibid* 400, 28 C. 540, 18 A. 332 and 28 A. 167, D.

(16) *Presumption as to separation of all members on the separation of one of them—Hindu Law.*

Held, that where one co-parcener in a joint Hindu family separates, it is not impossible that the others should remain united. If then it is proved that the others did not separate and lived throughout in union, it would be sufficient to establish an agreement to remain united. **Mussammat Santana v. Narpal Singh**, 9 O.C. 216.

WELLS, J.C.

Hindu Law.—(Continued).**—12.—(Joint Family).—(Concluded).**

References.—30 C. 281 (P.C.), 30 C. 725 (P.C.), 30 C. 788 (P.C.), R.

(17) *Presumption—Resumability of land granted to a widow for maintenance.*

* In the absence of any proof of division, it must be held that a Hindu family was undivided.

In the absence of evidence to show that it was intended that land set apart for maintenance of a co-parcener's widow was not to be resumed on her death, the presumption is that the land was intended to be resumed. **Malladi Venkatappayya v. Jonnalagadda Venkatasubbayya**, 16 M. L. J. 352.

MOORE and SANKARAN NAIR, JJ.

(18) *Mitakshara—money decree against father—death of father before attachment, effect of.*

Where a Hindu father, against whom a decree for money has been passed dies before joint family property is attached, the decree-holder is not entitled to realise the amount of his decree out of the joint family property, which had devolved upon the sons by right of survivorship (a). **Sheonandan Khan v. Maharaja Parbhu Narain Singh**, 3 A.L.J. 663 = A.W.N. (1906), 281.

STANLEY, C.J., & RUSTOMJEE, J.

References ;—(a) 16 A. 449 and 6 C.W.N. 223, R.

(19) Member of joint family going into trade without use of family funds—Acquisitions of trade—Self-acquisition or joint family property—See HINDU LAW (SELF ACQUISITION), No. 1, 25 P. R. 1906.

(20) Right of—to debutter property—See HINDU LAW (RELIGIOUS MATTERS), No. 2, 33 C. 507.

(21) Powers of the manager to bind other members of the family by borrowing debts—See HINDU LAW (DEBTS), No. 2, 3 A. L. J. 274.

(22) Suit by one member of a—for redemption—second suit by other members—See RES JUDICATA, No. 15, 3 A.L.J. 644.

(23) Members other than the recorded member, co-sharers for purposes of pre-emption—See PRE-EMPTION, No. 32, 3 A.L.J. 641.

See, also, I, 487-492 and Construction (of *Desds*), No. 12, *Hindu Law (Inheritance)*, No. 5; *Non-Joinder of Parties*, No. 1 and *Right of Suit*, No. 6.

Hindu Law.—(Continued).**—13.—(Legitimacy).**

—of offspring of a marriage—between a Brahmin and a Chattri—See HINDU LAW (MARRIAGE), No. 1, 3 A.L.J. 209.

See, also, I, 492 and *Hindu Law (Inheritance)*, No. 4.

—14.—(Maintenance).

(1)—of near agnatic relations in lieu of their services is no evidence of non-division from them—See HINDU LAW (PARTITION), No. 1. 10 C.W.N. 388.

(2) *Transfer of Property Act (IV of 1882), S. 39—Maintenance of Hindu widow—Whether charge upon the estate—Hindu Law—Mitakshara School—Transfer of estate with intention to defeat right—Fraudulent intention—Purchaser with notice, position of.*

When immovable property, from the profits of which a Hindu widow was entitled to receive her maintenance, was sold and the sale deed recited that the amount of maintenance would continue to be paid to the widow by the vendor and that the property sold would not be subject to any charge for it.

Held—That this mere recital was not enough for holding that the conveyance was executed with the intention of defeating the right of the maintenance-holder, within the meaning of S. 39 of the Act. It was necessary to enquire whether at the time of the sale, there was sufficient property left in the hands of the vendor out of which the amount of maintenance could be realised, and if there was not, whether the vendee was aware of the fact.

The intention to defeat the right of the maintenance-holder against which provision is made in S. 39 of the Act, involves the idea of a fraudulent intention (a).

Under the Mitakshara, the maintenance of a widow is not a charge upon the estate of her deceased husband (b). **Digambari Debi v. Dhan Kumari Bibi**, 10 C.W.N. 1074 = 4 C.L.J. 476.

GHOSE, C.J., CASPERSE, J.

References.—(a) 22 A. 326, *Appr.* (b) 2 B. 494, 1 C. 365, 22 A. 326, 24 A. 160 12, Bom. H. C.R. 69, *relied on*, 15 W.R. 263 and 25 W.R. 100, *not F.*

(3) *Right to maintenance of widow having property of her own.*

Hindu Law.—(Continued).**———14.—(Maintenance).—(Concluded).**

Under the Hindu Law, so long as an applicant for maintenance has sufficient private means for her own support, she cannot claim maintenance from her husband's family.

By a private award a Hindu widow was allowed maintenance from her husband's co-parceners who obtained his property by right of survivorship, the family being governed by the Mitakshara School of Hindu Law. Subsequently she inherited considerable property from her father.

Held, the widow having an independent income sufficient for her needs cannot claim maintenance from her husband's family, so long as she has got such income. *Rama wati Keer v. Manjhari Keer*, 4 C.L.J. 74.

PRATT and ORMOND, JJ.

References.—6 I.A. 114, 3 B. 415, 14 B. 490, F.

(4) Resumability of land granted to a Hindu co-parcener's widow for her presumption—See HINDU LAW (JOINT FAMILY), No. 17, 16 M. L. J. 352.

See, also, 1, 492, 495, and *Custom (Punjab)*, No. 3 and *Khoja Mahomedans*, No. 1.

———15.—(Manager).

(1) *Manager representing minor co-parceners in a suit—Rule against perpetuity—Indian Succession Act (X of 1865), S. 101.*

As a matter of practice suits are not filed in Courts by managers representing their minor co-parceners; the practice is to join all persons interested but it would seem that even if, on the face of the plaint, there were an allegation of a sole plaintiff that he sued as manager on behalf of a co-parcenary, the minor co-parceners would not be bound by the proceedings unless by judicial sale under the decree rights had been created in innocent third parties and no prejudice were shown to the absent co-parceners.

One of the clauses of a will ran: "As to my other property which there is, that is, the property situated on the east side of the house of my step-brother, I give the same to my younger son, M, for his life. He shall have no authority either to mortgage or to sell the said property. He shall only receive the income of the said property and I give the property after his death to his son or to his sons in equal shares should there be (any such son or sons). In case he leaves no son behind him, my Mukhtars shall

Hindu Law.—(Continued).**———15.—(Manager).—(Concluded).**

get a son adopted by his wife and thus perpetuate his name." And they shall give the said property to him on his attaining the age of twenty-one years."

Held, on a construction of the above clause, that the bequest in favour of a son of M who might be adopted at any time after M's death by a widow who might not have been living at the testator's decease was void under S. 101 of the Indian Succession Act, 1865, *Kashinath Shamji v. Chinnaji Sadashiv*, 8 Bom. L.R. 268=30 B. 477.

SCOTT, J.

(2) Power of—of a joint Hindu family—See HINDU LAW (JOINT FAMILY), No. 8, 18 P.L.R. 1906.

(3) Power of father, being the manager of a joint Hindu family, to bind other members of the family by debts contracted by him—See HINDU LAW (DEBTS), No. 2, 3 A.L.J. 274.

See, also, 1, *Hindu Law (Joint Family)*, Nos. 1 and 7.

———16.—(Marmakatayam Law).

(1) *Authority of joint owners to divide the property of the family—Necessity for all parties to joint in, or give their consent for, the transaction—when such transaction binding on minor members not parties to the transaction.*

It is competent to joint owners, by the Marmakatayam Law, to divide the same by mutual consent, though the suit for compelling a partition will not lie.

It would, therefore, be competent to such joint owners to allow any one or more of themselves to take any portion of the joint property as his or their separate property. That such transactions, however, require the consent of each and every one of the persons interested in the property is unquestionable. If there are minors, not in a position to give their consent, the transaction would not bind them unless it can be shown that it was entered into for considerations beneficial to the family, as a whole, including the minors. *Arayalprath Kunhi Peecher v. Kanthilath Ahmad Kuti Haji*, 29 M. 62.

SUBRAHMANYA AYYAR, OFFG. C.J. and BODDAM, J.

Hindu Law.—(Continued).**—17.—(Marriage).**

- (1) *Custom—Mixed marriage—Brahman and Chattri—Legitimacy of offspring—Lex loci—Burden of proof.*

Whatever may have been the case in ancient times, as shown in the old text books, at the present day a marriage between a Brahman and a Chattri is not a lawful marriage in these Provinces and the issue of such a marriage is not legitimate.

A custom of succession to property situate in British India at variance with the *lex loci* must be proved by the person setting it up.

A territorial custom, which permits intermarriages unlawful under the ordinary Hindu Law and which makes legitimate the issue of such marriages is not applicable to a person who had never any domicile in, and but seldom visited, the country where it prevails. **Badam Kumari v. Suraj Kumar**, 3 A. L. J. 209 = 28 A. 459 = A. W. N. (1905), 88.

BURKITT and ALKMAN, JJ.

- (2) *Cohabitation—Presumption regarding marriage.*

A legal marriage cannot be presumed under the Hindu Law from the mere fact of continuous cohabitation. **Baru v. Kundan**, A.W.N. (1906), 204 = 3 A.L.J. 807.

ALKMAN, J.

(3) Where the marriage of a deceased holder of *Stridhana* had been in an unapproved form, her father's kinsmen would be entitled to succeed in the absence of lineal descendants—See HINDU LAW (INHERITANCE), No. 1, 1 M.L.T. 68.

(4) Payment of the expenses of near agnatic relations is no evidence of non-division from them—See HINDU LAW (PARTITION), No. 1, 10 C.W.N. 338.

(5)—between a Bedi Kshatri and a Brahmini validity of—See CUSTOM, No. 4, 77 P.L.R. 1906.

(6) Applicability of Divorce Act to Hindu marriages—See ACT IV OF 1869 (DIVORCE) No. 1, 8 Bom. L. R. 356.

(7)—in approved form, effect of, on inheritance and succession—See HINDU LAW (SUCCESSION), No. 3, 7 Bom. L. R. 447.

(8) Presumption as to form of marriage. See ACT VII OF 1869, (SUCCESSION CERTIFICATE) No. 1, 16 M.L.J. 550 IN THE SUPPLEMENT.

Hindu Law.—(Continued).**—17.—(Marriage).—(Concluded).**

See, also, I, 495; Act XV of 1856 (Imperial), No. 1; Evidence Act, No. 32; and cases under Hindu Law and (Restitution of conjugal Rights).

—18.—(Partition).

- (1)—*Evidence—Associating agnatic relations in the management of estate—Maintenance in lieu of services—Marriage expenses, payment of.*

Held, on the evidence, that there was a partition of the family property, so that the property in dispute was the separate property of the last male holder and that he did not hold it merely as a manager of a joint Hindu family.

The fact that he availed himself of the services of his near agnatic relations in the administration of his property at the same time that he gave them maintenance and paid the expenses of their marriage and other ceremonies was not inconsistent with his position as a separated member. It was both natural and probable. **Deoki Singh v. Musammat Anupa, Deoki Singh v. Matho Singh**, 10 C. W.N. 338 (P.C.) = 1 M.L.T. 96 = 16 M.L.J. 109.

LORD MAGNAUGHEN, SIR FORD NORTH, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

- (2) *Partition—Hindu law—Plaintiff in partition suit not obliged to ask for partition of the whole of the joint property.*

A person asking for partition is not compelled to include in his suit the whole of the joint property, but may confine his suit to the portion of the property which he is desirous of having partitioned. The plaintiff, in this case, was not a member of a joint Hindu family but he was a stranger, being purchaser of a 5-6th share in two shops belonging to the family from some of the members of the family. **Ram Mohan Lal v. Mul Chand**, A.W.N. (1905), 160 = 2 A.L.J. 700 = 28 A. 39.

BANERJI and RICHARDS, JJ.

References.—14 C. 122, Distd. 6 B.L.R. 134, F.

- (3) —*Right to sue for partition of a portion of the joint-family property.*

One of two brothers who formed a joint Hindu family sold his own interest in a portion of the joint family property. Held, that it was

Hindu Law.—(Continued).

13.—(Partition).—(Continued).

competent to the other brother to sue for partition of his share in the property so dealt with without asking also for partition of the remainder of the joint family property (a). *Ram Charan v. Ajudhia Prasad*, A.W.N. (1006), 174 = 28 A. 50.

BANERJI and RICHARDS, JJ.

References.—(a) 23 A. 216 and 19 M. 867, F.

(4) *Expenses for ceremonies to be set apart—Step-mother, share of, on partition—Value of stridhan to be deducted from the share—Expenses for prospective ceremonies of nephews and nieces not allowed.*

In a partition between brothers and father belonging to a joint Hindu family, those who are not married, &c., are entitled to have a sum set apart from the family property sufficient to defray the expenses of the thread, betrothal and marriage ceremonies which have not been performed, the sum set apart being calculated according to the extent of the family property.

When sons in a joint Hindu family come to a partition of the family property, the step-mother is entitled to a share equal to the son's; but from that share must be deducted the value of any *stridhan* received by her as a gift from her father-in-law or her husband.

In a partition between brothers in a joint Hindu family, one of the brothers cannot claim any sum for the prospective ceremonies of his children. *Jairam Nathoo v. Nathoo Shamji*, 8 Bom. L.R. 692.

SCOTT, J.

(5) *Mitakshara—Partition between uncle and nephews—Nephews joint tenants—survivorship.*

When a Joint Hindu family, consisting of two nephews and an uncle, referred the matter in dispute between them to arbitration, and the arbitrators divided the property into two shares and allotted one to the uncle and one to the two nephews and it did not appear that there was any intention on the part of the nephews to separate *inter se*, held that the nephews remained joint tenants and did not become tenants-in-common, and, on the death of one of them, the other became the owner of the whole property by right of survivorship.

Hindu Law.—(Continued).

14.—(Partition).—(Continued).

Durga Dei alias Gulab Dei v. Bahmakand, 2 A.L.J. 685, N. (1906), 287.

STANLEY C.J. and BUSTOMJEE, J.

(6)—*Partition deed giving certain advantages to minor member of family—Right of person so benefited to sue on deed—Act No. 1 of 1877 (Specific Relief Act), s. 33 (c).*

By a deed of partition executed by the adult members of a joint Hindu family, it was agreed that a certain minor member of the family, represented in the execution of the deed by his father, should receive a certain share in a particular village "by right of primogeniture," and the agreement further recited that the member in question had been put into possession of the share allotted to him. It was further agreed that, inasmuch as the property thus dealt with was subject to two mortgages, the other members of the family would be responsible for the payment of the mortgage debts and would indemnify the recipient of the mortgaged property in case of proceedings being taken against such property for satisfaction of the mortgage debts.

Held, on suit by the minor (after attaining majority) to compel reimbursement by the other members of the family, that the partition deed was enforceable in favour of the minor, just as much as, if just and equitable, it would have been binding upon him, and that the plaintiff was entitled to sue for any benefit which the deed purported to secure to him.

Held, also, on a construction of the partition deed that the plaintiff was also entitled to sue having regard to the terms of section 23 (c) of the Specific Relief Act, 1877. *Awadh Naraj Prasad Singh v. Sita Ram Singh*, A.W.N. (1906), 261 = 3 A.L.J. 785.

STANLEY, C.J. and KNOX, J.

Reference.—30 I.A. 220 R.

(7) No separate possession of any particular portion of undivided family estate can be successfully claimed except in a suit for—See *Hindu Law (Joint Family)*, No. 2, 8 Bom. L. R. 99.

(8) Right of Hindu widow to claim partition in a Revenue Court—See *Hindu Law (Widow)*, No. 1, 9 O.C. 53.

(9) Presumption as to separation of all members on the separation of one of the members of

Hindu Law.—(Continued).**12.—(Partitions).—(Concluded).**

a joint Hindu family—See **Hindu Law (Joint Family)**, No. 16, 9 O.C. 218.

See, also, I, 498-498 and **Hindu Law (Maintenance)**, No. 5.

13.—(Exemption).

Exemption between Hindu in Benares city—See **Exemption**, No. 28, 8 A.L. 888.

20.—(Religious Endowments).

- (1) *Hereditary trustees of a temple, power of to appoint additional trustees—Suit by trustee on behalf of temple—Impleading in the suit of persons interested as worshippers—no misjoinder.*

In the present suit, brought on behalf of a temple by its existing hereditary trustees, certain persons figured as parties, whom the trustees alleged they had made additional trustees along with them. *Held*, those persons ought not to have been impleaded on the footing of their additional trusteeship, because the hereditary trustees have no power to add to their number by appointing additional trustees, but their names might be allowed to stand on the record for the reason that they are persons interested in the temple as its worshippers and as such they may stand as parties to the present suit, instituted on behalf of the temple against third parties acting to the injury of the temple. **Chidambaram Chettiar v. Sri Rangachariar**, 15 M. J. J. 475—49 M. 106.

SUBRAHMANYA AIYAR and BENNON, JJ.

References.—12 M.L.J. 855 and 4 M.H. C.R. 2, F.

- (2) *Religious endowment—Succession to management.*

Held, that, in the absence of express directions by the founder of an endowment, the right to nominate the manager reverts to the heirs of the founder on failure of the persons expressly appointed. **Chandranth Chakrabarti v. Jadbendra Chakrabarti**, A.W.N. (1906), 175=28 A. 683.

STANLEY, C.S. and KNOX, S.

Reference.—18 A. 227, Appr.

- (3) *Shebait, how far trustee—Office or dignity, holder of—delegation of office—Palas or turn of worship—Family arrangement—How altered—Proof of.*

The manager of a Hindu temple is, by virtue of his office, the administrator of the property

Hindu Law.—(Continued).**20.—(Religious Endowments).—(Concluded).**

attached to it. As regards the property, the manager is in the position of a trustee, but, as regards the service of the temple and the duties that appertain to it, is rather in the position of the holder of an office or dignity, which may have been originally conferred on a single individual but which, in course of time, has become vested by descent in more than one person. In such a case, in order to avoid confusion or an unseemly scramble, it is not unusual and not improper, for the parties interested to arrange among themselves for the due execution of the functions belonging to the office in turn or in some settled order and sequence. There is no breach of trust in such an arrangement, nor any improper delegation of the duties of a trustee.

The parties interested are competent to make such an arrangement without applying to the Court.

A family arrangement so arrived at must hold good until altered by the Court or superseded by a new scheme effected with the concurrence of all parties interested.

Unbroken usage for a period of 10 years was held to be conclusive evidence of a family arrangement, to which the Court was bound to give effect. **Ramanathan Chetti v. Murugappa Chetti**, 10 C.W.N. 825 (P.C.)=8 Bom. L.R. 498=16 M.L.J. 265=4 C.L.J. 189=29 M. 183=8 A.L.J. 707.

LORD MACNAUGHTEN, SIR ANDREW SCOBLE, SIR ARTHUR WILSON and SIR ALFRED WILLS.

See, also, I, 498, 499.

21.—(Religious Matters).

- (1) *Debutter property is property dedicated to a God or Gods. Where, in a document, there was nothing to show that there was such a dedication, except the use of the word "Debutter" and the grant is made apparently for the personal enjoyment of the grantee, and the grantor may have contemplated that the profits of the property, after satisfying the personal wants of the grantee, would be devoted to the service of the God whom he attended.*

Held, that such an expectation may explain the use of the word "Debutter" but does not suffice to constitute a valid dedication to the

Hindu Law.—(Continued).———**21.**—(Religious Matters).—(Contd.)

God (a). **Shayama Charan Nundy v. Abhiram Goswami**, 3 C.L.J. 306=10 C.W.N. 738=38 C. 511.

MACLEAN, C.J. and GEIDT, J.

Reference.—(a) 2 C.L.J. 546, F.

(2) *Joint Hindu family, debutter property held by, right of suit of co-parcener regarding—Mitakshara Law.*

Plaintiff sued to have it declared that an alienation by his undivided father and uncle of certain properties alleged to be the ancestral debutter property of the family was a bad alienation which ought to be set aside as made for their own benefit and not for the benefit of the idol concerned. A decree in favour of the plaintiff was passed by the Court of first instance but was reversed on appeal by the lower appellate Court on the ground that the plaintiff was not competent to maintain the suit. *Held*, the family being governed by the Mitakshara Law, plaintiff, on his birth, became at once entitled to a share, not only in the family property, but also jointly as *shebait* of the debutter property (a) and it was, therefore, competent for him to maintain the present suit in respect of such property and the decree of the first Court must prevail. **Ram Chandra Panda v. Ram Krishna Mahapatra**, 38 C. 507.

MACLEAN, C.J. and MUKERJEE, J.

References.—(a) 28 M. 271, 27 I.A. 60, 8 W. R. Civ. Rul. 152, R.

(3) *Debutter property—Transferrability—Shebait, trespass by—Decree for ejectment—Mesne profits—liability of trust estate.*

Per RAMPINI, J.—A debutter property according to Hindu Law is not absolutely inalienable; it can be alienated for legal necessity, and therefore when a *shebait*, as such, trespasses on the property of another and so commits a tort, and he is sued for and cast in damages, the debutter property can be sold in execution on such a decree.

Per WOODROFFE, J.—As the decree in question appeared to have bound the trust estate, the debutter property was liable. **Krishna Klesore Chakravarti v. Sukha Sindhu Sanyal**, 10 C. W. N. 1000.

RAMPINI and WOODROFFE, JJ.

(4) *Provisions of Hindu will—Gift to idol, if absolute—See HINDU LAW (WILLS), No. 2, 3 C.L.J. 224.*

Hindu Law.—(Continued).———**21.**—(Religious Matters).—(Contd.)

(5) See under **RELIGIOUS ENDOWMENTS**, No. 1, 16 M.L.J. 150.

(6) Property constituting the endowment of a family charitable trust, being *prima facie* inalienable, the award made on its acquisition by Government might direct investment of the compensation-money in Government securities—See ACT I OF 1894 (LAND ACQUISITION), No. 28, 29 M. 117.

(7) **Religious Endowment—Succession to management—See HINDU LAW (RELIGIOUS ENDOWMENTS)**, No. 2, A.W.N. (1906), 178.

(8) Request to an idol—Right of *shebait* to take out probate—See ACT V OF 1881 (PROBATE AND ADMINISTRATION), No. 1, 10 C.W.N. 239.

See, also, I, 500-502, and Civ. Pro. Code, No. 8.

———**21-a.**—(Re-Marriage).

See I, Hindu Law (Succession), No. 3.

———**22.**—(Re-union).

(1) *First cousins—Mitakshara, Ch. II, S. 9, paras 2 and 3—Interpretation of texts.*

Under the Hindu Law, as laid down in *Mitakshara*, there cannot be a valid re-union between two first cousins, who were originally joint but had subsequently separated. **Basanta Kumar Singha v. Jogendra Nath Singha**, 3 C.L.J. 98=10 C.W.N. 286=38 C. 871.

RAMPINI and MOOKERJEE, JJ.

See, also, I, Hindu Law (Partition), No. 7.

———**22-a.**—(Restitution of Conjugal Rights).

See I, 502-504 and Limitation Act, No. 58.

———**23.**—(Reversioners).

(1) *Hindu widow—Effect of decree against widow in possession.*

A reversioner, succeeding to an estate after the death of the widow of the former owner, will be bound by a decree obtained against the widow, provided that there has been a fair trial of the suit in which such a decree was passed. **Madan Mohan Lal v. Akbaryar Khan**, A.W. N. (1905), 270=2 A.L.J. 848=28 A. 241.

STANLEY, C.J. and BURKITT, J.

References.—9 M.I.A. 543 and 21 C. 8, F.

(2) *Reversioner, suit by—for recovery of property transferred by Hindu widow—Consent of reversioner to transfer by Hindu widow*

Hindu Law.—(Continued).**22.—(Reversioners).—(Continued).**

*Hindu Law—Alienation by Hindu widow
—Legal necessity; consent of reversioners
how far evidence of.*

The plaintiffs, who were the reversionary heirs of one R, sued the defendant for the recovery of certain property of R, which had been sold to the defendant's predecessor in title by R's widow, who died in 1892, on the allegation that the sale was not binding upon them inasmuch as the widow held only a widow's estate in the property. The defence was that the sale was made with the consent of G, who was then the presumptive reversioner. The widow was 40 and G about 85 years of age at the time of the sale.

Held, that the consent by a reversioner is or may be evidence of the propriety of the transfer and that the value of such consent depends upon the circumstances of the case; and that, having regard to the circumstances of the present case, the consent of G was worth nothing and that the sale was not binding upon the plaintiffs. **The Deputy Commissioner, Sitapur, for Nabinagar Estate v. Auseri Singh**, 9 O.C. 104.

SCOTT and CHAMBER, J.CS.

References.—8 O.C. 21, *F.*, 19 C. 286 (P.C.), 10 C. 1102, *R.*

(3) *Suit by presumptive reversioner to set aside adoption by widow, decision in, whether res judicata against all reversioners—distinction between such suits and suits by reversioners to set aside alienation by qualified proprietor.*

The question in this case was whether the third defendant, the mother of one K, deceased, and his presumptive reversioner, in suing for and obtaining a decree declaring the adoption of the first defendant, as son to K, made by his widow, the second defendant, acted in a representative capacity with reference to the plaintiff, the next reversioner, and the other ulterior reversioners, assuming that the decree was obtained without fraud or collusion.

Held, the true purpose of the concession of a right of suit in such cases is the protection of the interests of the person or persons, who may eventually turn out to be the heir or heirs, and the object of the proceeding is really the perpetuation of the testimony, which owing to

Hindu Law.—(Continued).**23.—(Reversioners).—(Continued).**

lapse of time, might not be available for the heir, when the succession actually opens. But as laid down by the Judicial Committee in *Rani Anund Koer v. The Court of Wards* (a), although a suit in such a case may be brought by a contingent reversionary heir, yet, as a general rule, it must be brought by the presumptive reversionary heir, i.e., by the person who would succeed if the widow were to die at that moment, since it cannot be the law that any one who may have a possibility of succeeding on the death of the widow can maintain the suit; for, if so, the right to sue would belong to every one in the line of succession, however remote. The rule thus laid down by the Judicial Committee furnishes practically conclusive proof that the correct view of the law on the point is that a reversioner allowed to maintain such a suit does thereby act not only for himself but also on behalf of all the rest; because, the selection of one, out of a body of persons possessing a common or similar interest, as the individual empowered to carry on legal proceedings for the vindication of such interest, necessarily involves the concession to him of a representative capacity in the matter.

Obiter. In suits relating to alienations by a qualified owner, the *dicta* of the Privy Council to preclude our holding that the presumptive reversioner represents the remote reversioners. An unauthorised alienation by a qualified owner gives rise to a cause of action for a declaratory suit from the date of the alienation to all the reversioners. **Punnama v. Ferrazu**, 1 M. L. T. 183 = 16 M.L.J. 307 (F.B.) = 29 M. 390.

WHITE, C.J., and SUBRAHMANYA AIYER,
DAVIES, BENSON, and MOORE, JJ.

References.—(a) 24 M. 405, *R.* 26 M. 291, *P.* 8 I.A. 14 (22), 8 C.L.R. 381 and 6 C. 704, *F.* 27 M. 588, 28 M. 57, 32 C. 62 and 10 B. H.C. R. 351, *R.*

(4) *Right of daughter, a next reversioner, to sue for contravention of father's will and for declarations incidental thereto—See SPECIFIC RELIEF ACT, No. 10. 8 C.L.J. 224.*

(5) *The right of a presumptive reversionary heir under Hindu law, inalienability of—See TRANSFER OF PROPERTY ACT, No. 8, 29 M. 120.*

(6) *First suit by reversioner for declaration that alienation by widow not binding on him*

Hindu Law.—(Continued).**22.—(Reversioners).—(Concluded).**

withdrawn—Second suit by the same reversioner for possession, after estate falls into possession not affected by Ss. 373 and 374, Civ. Pro. Code—See CIV. PRO. CODE, No. 217, 9 O. C. 164.

(7) Alienation by widow—Suit by reversioner for recovery of property—Limitation—See LIMITATION ACT, No. 55, 8 BOM. L.R. 675.

(8) Whether order on previous application by Hindu widow for probate or letters binds reversioners—See ACT V OF 1881 (PROBATE AND ADMINISTRATION), No. 9, 10 C.W.N. 955.

(9) Effect of relinquishment of estate by Hindu widow in favour of next reversioners—Death of the next reversioners—See HINDU LAW (WIDOW), No. 4, A.W.N. (1906), 272.

See, also, I, 504-511; *Hindu Law (Alienation)*, Nos. 2, 6, 8; *Hindu Law (Stridhan)*, No. 4; *Limitation Act*, Nos. 76, 77, 78, 100 & 108; *Majority of Causes of Action*, No. 2; *Specific Relief Act (I of 1877)*, No. 20; *Transfer of Property Act*, No. 70.

23.—(Schools of Law).

See I, *Hindu Law (Joint Family)*, No. 6.

24.—(Self-acquisition).

(1) Acquisitions by a member of a joint family trading with separate funds—Exclusive right of such member to his acquisitions—Inapplicability of the presumption as to the property being joint.

Following Hindu Law of the Mitakshara School, where a member of a joint Hindu family left the family home and started a shop with funds of his own, admittedly non-ancestral, held, that any member of the family claiming to have a share in the shop, must show, as a matter of fact and by clear evidence, that in some way he was associated in the business and became, by taking part in the business or otherwise, a partner. Otherwise the trading member is alone entitled to his entire acquisitions from such business and the presumption of Hindu Law that the property with a co-partner is the property of the whole joint family does not arise *Rijhu Ram v. Mohan Lal*, 25 P.B. 1906=81 P.L.R. 1906.

JONESSTONE and RATTIGAN, JJ.

(2) *Prima facie* for insurance paid out of salary of deceased—Sum insured *prima facie* the se-

Hindu Law.—(Continued)**25.—(Self-acquisition).—(Concluded).**

parate property of deceased, being his—See ACT VII OF 1880 (SUCCESSION DUTY), No. 2, 29 M. 121.

See, also, I, 511, 512.

26.—(Stridhan).

(1) Co-widow—Grand children of the brother of the co-widow's father-in-law, priority between.

Under the Mitakshara, the widow is entitled to succeed to the Stridhan left by her co-widow, in preference to the grand-children of the brother of her father-in-law. *Krishnabai Warand v. Shripad Pandit*, 8 Bom. L.R. 12=39 B. 383.

SIR LAWRENCE JENKINS, C.J. and RUSSELL, J.

(2) Mitakshara—Succession—Stridhan.

Held, that the stridhan of a Hindu woman governed by the Mitakshara law would, on her death without issue, go to the sons of her husband's sister in preference to the sons of her own sister. *Ganeshi Lal v. Ajudhia Prasad*, A.W.N. (1906), 39=8 A.L.J. 85=28 A. 345.

BANERJI and RICHARDS, JJ.

(3) Lease granted by father, if a "gift subsequent"—Stridhan—Ayautuka—Anwadheya—Childless woman's heir to Ayautuka Stridhan—Pitridatta—Preferential heir—Rules of Hindu Law, if applicable, to leasehold interests.

A leasehold property, such as *mourasi moharar*: lease reserving a nominal annual rent granted by a father to his daughter after her marriage, is one to which the Rules of Hindu Law are applicable, and his property, which possesses the characteristics of Stridhan according to the *Dayabhaga*; the interest in the property so transferred to the daughter, constitutes her *Ayautuka Stridhan* and falls within the class known as *Anwadheya*.

The meaning of *Anwadheya* explained.

Under the Bengal School of Hindu Law, the mother is entitled to succeed to the *Pitridatta Ayautuka Stridhan* of a childless woman in preference to her husband.

Neither according to *Timutavahana*, nor according to *Srikrishna*, does the fact that the Stridhan in *Pitridatta* make any difference in deciding the question of preference between the

Hindu Law.—(Continued).

—25.—(Stridhan).—(Continued).

mother and the husband. *Ram Gopal Bhattacharya v. Narain Chandra Bandopadhyay*, 9 C.L.J. 15 = 10 C.W.N. 510 = 88 C. 315.

RAMPINI and MOOKERJEE, JJ.

References.—11 B.L.R. 286; 16 W.R. 105, on review 19 W.R. 264, 1 C. 275 and 28 C. 311, R.

(4) *Ayautika*—Deed of gift, construction of—*Exakte of inheritance*—Life estate with remainder over—*Mesne profits*.

C, a Hindu, executed a deed of gift in favour of his sister D, by which he gave her a Zemindari for her maintenance, and, after laying down that she was to get her name registered and enjoy possession during her life-time, provided as follows:—

"On your death, your husband, sons, grandsons and other heirs in succession will continue to enjoy and possess. The power to dispose of by gift or sale will successively vest in your husband, sons, grandsons and others."

Held, that, the effect of the deed was not to confer upon D, a life-estate, with the remainder to her husband, but it conferred upon her an heritable estate, so as to make the property *Ayautika Stridhan* to which her unmarried daughter was entitled to succeed on her death in preference to her husband.

Held, further, that though some of the heirs were named, they were to succeed as heirs, and the enumeration must be taken to be an inaccurate one and in wrong order.

Held, further, that when a person who was the natural guardian of an infant got his name registered by an untrue representation that he, and not the infant, was entitled to the estate, his possession must be taken to have been adverse to that of the infant, and the latter, upon attaining majority, is entitled to mesne profits, from the date of the registration of the name and not merely for three years preceeding the suit. *Rasanta Kumari Debi v. Kamikshya Kumari Debi*, 2 C.L.J. 238 (F.C.) = 15 M.L.J. 390 = 7 Bom. L.R. 904 = 10 C.W.N. 1 = 2 A.L.J. 310 = 33 C. 23 = 33 I.A. 181.

Lord DAVEY, Sir ANDREW SCOBIE and Sir ARTHUR WILSON.

(5) *Daughter*—Absolute interest—Woman—*Stridhan*—*Saudayika*—Disposition of property during coverture—Will—Consent of husband,

Hindu Law.—(Continued).

—25.—(Stridhan).—(Concluded).

In the Bombay Presidency, female heirs, except those who come into the family of prepositus by marriage, take absolute interests.

That which is obtained by a married woman, or by a virgin in the house of her husband, or of her father, from her brother, her parents, is termed *saudayika*.

A woman cannot alienate her *Stridhan* other than *Saudayika*, during coverture without her husband's consent; and her testamentary power of disposition is subject to the like restriction where she is survived by her husband, who is not shown ever to have assented to the will. *Bhan bin Abaji Gurav v. Raghunath Krishna*, 7 Bom. L.R. 936 = 30 B. 230.

JENKINS, C.J., and ASTON, J.

References.—25 A. 468, 25 A. 476; 1 B. H.C. R. 180; B H.C.R. 117 at p. 124, *Refd.* 40.

(6) Preference of sister to sister's son of deceased female holder to succeed to *Stridhan* property—See HINDU LAW (INHERITANCE), No. 1, 1 M. L. T. 68.

(7) Succession to—of a widow—Co-widow preferred to husband's brother and brother's son—Succession in Island of Bombay—See HINDU LAW (INHERITANCE), No. 5, 10 C.W.N. 502.

(8) Succession to—Priority between full brothers and half brother, of the husband—See HINDU LAW (SUCCESSION), No. 4, 8 Bom. L.R. 685.

See, also, I, 512-515.

— 26.—(Succession).

(1) *Mitakshara*—Succession—Father's sister's son—*Bandhu*—Son's daughter not a preferential heir—

Females not expressly named in the *Mitakshara*, do not inherit (a).

According to the *Mitakshara*, as understood in these provinces, the son of a father's sister is entitled to succeed as a *Bandhu* to the estate of a Hindu in preference to the daughter of a predeceased son who is not so named (b). *Nanki v. Gauri Shankar*, 2 A.L.J. 654 = A.W. N. (1905), 242 = 28 A. 187.

BANNERJI and RICHARDS, JJ.

References.—(a) 3 A. 45 and 5 A. 311 (F.B.), F. (b) (1886) W.R. Sp. No. 75 (F.B.), *Refd.* to 23 A. 338, doubted.

Hindu Law.—(Continued).**—28.—(Succession).—(Continued).**

- (2) *Bandhus—Preference of Atma-Bandhus to Pitri Bandhus—Nearer line excluding the more remote.*

Plaintiff was the deceased owner's paternal grand-father's sister's son. The defendant was his father's sister's daughter's son. The defendant was held to be the preferable heir as an *Atma-Bandhu*, and, as such, nearer to the last owner than the plaintiff, who was the owner's *Pitri Bandhu*. Held, further, as to the contention that the defendant has to trace his relation to the common ancestor through two females, while there is the intervention of but one female in the case of the plaintiff and that plaintiff has, therefore, a preferential right, that, assuming, the ground relied on may perhaps avail when the competition is between *Bandhus* of the same category and of the same degree in affording a ground for preference in favour of the party able to trace his descent with a less intervention of females, it cannot affect the operation of such a cardinal principle of the Hindu Law as that the nearer line excludes the more remote. **Krishna Ayyangar v. Venkatarama Ayyangar**, 29 M. 115.

SUBRAMANIA AYYAR, OFFG, C.J. and SANKARAN NAIR, J.

- (3) *Cutchi Memons—Succession—Marriage in approved form.*

In the absence of proof of any special custom of succession, the Hindu Law of Inheritance applies to *Cutchi Memons*.

The legal consequences of the class of marriage, the approved and the disapproved, in relation to inheritance, vary according as their leading characteristics are blameworthy or not and, suggest the inference, that it is the quality and not the form of marriage that decides the course of devolution. Where the marriage is approved, the husband and his heirs come in; when disapproved, they do not.

When the widow of *Cutchi Memon* dies intestate and without issue, property acquired by her from her deceased husband does not descend to her own blood relations, but to the relations of her deceased husband. **Moosa Haji Joonus v. Haji Abdul Rahim**, 7 Bom. L. R. 447 = 30 B. 197. •

JENKINS, C. J. and BATCHELOR, J.

- (4) *Stridhan—Full brothers and half-brothers—the husband, priority between.*

Hindu Law.—(Continued).**—28.—(Succession).—(Concluded).**

Under the *Mitakshara*, as regards the succession to the non-technical *stridhan* of a widow who has died without issue, the whole brother of her deceased husband is to be preferred to his half-brother. **Parmappa Basagnanda v. Shiddappa Giriappa**, 8 Bom. L. R. 685 = 30 B. 607.

JENKINS, C.J. and HEATON, J.

- (5) *Degraded woman—Prostitution—Dissolution of tie of kindred—husband's rights to property left by—*

By her degradation, a Hindu woman does not cease to be a Hindu and the rule of succession to her property is the ordinary rule of Hindu Law. Where a wife left her husband and became a prostitute and died as such, held that her husband would succeed to her property. Prostitution does not sever the legal relation and the degradation of the woman in consequence of her unchastity does not entail the cessation of the tie of kindred between her and her husband's family (a). **Narayan Das v. Tirlok Tiwari**, 3 A. L. J. 537 = A. W. N. (1906), 243.

BENERJI and AIKMAN, JJ.

References.—(a) 23 M. 171, F., 7 Select Reports, 273, not F., 1 A. 46, R.

- (6)—of undivided brother, to impartible estate by survivorship—See HINDU LAW (IMPARTIBLE ESTATES), No. 3, 16 M. L. J. 339.

- (7)—to impartible estates—Devolution of impartible property from one line to another—Half and full blood—See HINDU LAW (IMPARTIBLE ESTATE), No. 1, 2 C. L. J. 231 (P. C.).

- (8) Right of female heirs to take share of interest—Daughter—*Saudayika*—See HINDU LAW (SRIDHAN), No. 5, 7 Bom. L. R. 607.

See, also, I, 516-518; Hindu Law (Adoption), No. 6; Hindu Law (Religious Matters), No. 3; Hindu Law (Sridhan), Nos. 2, 4.

—27.—(Texts).

- (1) Construction of—rule of—*Mayukha—Mitakshara*—See HINDU LAW (INHERITANCE), 5, 10 C. W. N. 802.

- (2) *Mitakshara*, females not expressly named in, whether entitled to inherit—See HINDU LAW (SUCCESSION), No. 1, 2 A. L. J. 654.

See, also, I, Hindu Law (Stridhan), No. 4.

Hindu Law.—(Continued).

—25.—(Trusts).

- (1) *Trust deed creating charitable trusts, when treated as nominal and colorable—Deed executed under parental influence between father and son standing in fiduciary relation, laches—Limitation Act, XV of 1877, Art. 91—Letters Patent, cl. 36.*

Suit to establish the right of the plaintiffs to a monthly payment of a fixed sum of money out of certain alleged trust properties in the hands of the defendant. The strength of the plaintiff's claim depended upon the effect, if any, that could be given to a registered instrument described as a settlement and executed by the defendant and another. After providing a detailed scheme for the future maintenance and administration of certain charities and trusts and for the appointment of a trustee and of a manager under the trustee the instrument proceeded to give directions to the two office-holders as to the terms and conditions as to disbursement, duration and lapse of certain annuities, with details as to various other matters and concluded with three schedules of which schedule C related to the scale of payment to the annuitants. It was under item No. 8 of the schedule that the plaintiffs claimed. The defendant contended, first, that the instrument was a mere sham or nominal document not intended to be acted upon and not acted upon, but it was held that the trust deed in question could not be regarded as nominal for the reasons, (1) that it was altogether unlike the deeds in the instances referred to on behalf of the defendant, in which there was no charity or trust actually brought into existence, there was no proof of the application of the alleged endowment for the maintenance thereof and the whole conduct of the parties was inconsistent with the hypothesis of a genuine trust and (2) that the unquestionable fact of the existence of the charitable institutions under the deed in question and maintenance of those institutions for many years in the way stated therein argued almost irresistibly in favour of the reality of the transaction evidenced by the deed. *Held*, further, *per* SIR S. SUBRAMANIAM AYYAR, OFFG. C. J. that the provisions in the trust-deed, permitting transfer and substitution in relation to the trust properties; and denying to the public any vested or other interest in the charities, even if regarded as conditions of doubtful validity, cannot, in any

Hindu Law.—(Continued).

—26.—(Trusts).—(Continued).

way, support the view that the document is merely nominal and that the transaction is not one to be viewed with that jealousy, with which the Courts most properly regard transaction between persons standing in the fiduciary relation of parent and child, whereby an advantage is secured to the former at the expense of the latter, because the father in treating himself as sole trustee in the instrument was not arrogating to himself what he had no right to under the law (a).

Also the defendant had precluded himself from impeaching the document, he, as a party to the instrument, having failed to have it set aside within the period allowed by law to him, *vis.*, three years under Art. 91 of the Limitation Act (b) and also on account of laches on his part in having long lain by till his father's death and made it impossible for the plaintiff to obtain from the father any other similar provision in fairness to themselves. And plaintiffs were therefore entitled to the payment provided for in their favour by the instrument relied

Per SANKARAN NAIR, J.—Where a trust-deed, in terms, declares that the charities mentioned in it shall be considered purely private and that the public shall never, at any time, have any interest therein or in any charity property, the trust, if any, created thereby will be a private one and it can, at any time, be put an end to something wanting misfeasance or malfeasance thereof may be condoned. Right to change or withdraw the properties conferred by the deed is not a mere invalid condition annexed but negatives the creation of any trust. Where the author of the trust intended his arrangements to come into force only after his death and had reserved his power of disposing of the properties, the trust would be void for uncertainty of the subject of it, since it was to comprise only such property as the author might not have disposed of during his life.

The same rules as are applied by English Courts of Equity in regard to transactions between persons standing in the fiduciary relation of father and child will apply even when the father takes only as trustee and, the son will be protected not because the father derives any advantage nor because the son is legally incapable of contracting, but on the ground that the son is not presumed to be a free agent,

Hindu Law.—(Continued).**—28.—(Trusts).—(Concluded).**

capable of forming an independent judgment, so long as he is subject to parental influence.

Under cl. 36 of the Letters Patent, where, in the case of a Letters Patent appeal, the judges of the High Court are equally divided in opinion the decision of the Senior Judge will prevail and S. 575, Civ. Pro. Code, has no application. **Roop Lal v. Lakshmi Doss**, 29 M. 1.

SUBRAHMANYA AYYAR, OFFG. C.J. and
SANKARAN NAIR, J.

References.—(a) 1 M.H.C.R. 415, R. (b) 15 C. 58, R., 12 B. 501. R. 2 M. 817, R. (c) 25 M. 555, and 26 A. 10, F.

See, also, I, Act XXVII of 1866 (Indian Trustees), No. 1.

—29.—(Widow).

(1) *Hindu widow having life-interest in her husband's estate claiming partition.*

Held, that a Hindu widow, having a life-interest in her husband's estate, is entitled to claim partition in Revenue Court. **Mahadeo Singh v. Musammat Deo Koer**, 9 O.C. 58.

WELLS, A.J.C.

(2) *Powers of alienation—Benefit of the estate—Power of widow to grant permanent lease—*

A Hindu widow has, in managing the estate of her deceased husband in her hands, the power to alienate any portion of the estate for its benefit and the benefit of the reversioners. Where the estate and the reversioners were found to have been benefited by a permanent lease granted by a widow, *held*, the reversioners could not impeach it. **Dayamani Debi v. Strinibash Cundu**, 33 C. 842.

MACLEAN, C.J. and BRETT, J.

References.—6 M.L.A. 303 and 6 C. 848, *Appl.*

(3) *Estate inherited by two widows—alienation by one widow.*

Where two widows of a deceased Hindu, governed by the Mitakshara Law, took a joint estate in the property of their deceased husband and, for some time remained in joint possession, but, subsequently, by arrangement between themselves, divided the property as between them, and it appeared from the conduct of the parties that the arrangement, which they had made for the partition of the property between

Hindu Law.—(Continued).**—30.—(Widow).—(Continued).**

them, was intended, so far as each was concerned, to give the other full power of alienation in the event of legal necessity. One of the co-widows had executed a deed of gift, conveying her share in the property to certain reversioners. The other widow had borrowed a debt from the plaintiff and executed the bond in suit mortgaging some of the properties. The present suit was instituted to recover the amount due on the mortgage bond and it was *held*, that the mortgage sued on was binding on the mortgaged properties since the same was executed by one of the widows for legal necessity, and that plaintiff was entitled to a decree under the Transfer of Property Act for realisation of the money due under the mortgage bond. **Thakar Mani Singh v. Dal Rani Koeri**, 38 C. 1079.

BRETT and GUPTA, JJ.

References.—8 C.W.N. 658, L.R. 16 I.A. 186 = 12 A. 51, 14 M.L.J. 199, 26 M. 884 and 23 M. 522, R.

(4) *Effect of relinquishment of estate by widow in favour of the present reversioners.*

A Hindu widow in possession of a widow's estate in property of her deceased husband, a separated and childless Hindu, relinquished possession thereof to two persons who at the time were the next reversioners, they agreeing to pay her a maintenance allowance; but it did not appear that she intended to make them, if she could, full owners of the property, although certain incorrect recitals in the agreement entered into by the widow, when she gave possession of the property, might have lent colour to this suggestion. Both the persons thus put into possession predeceased the widow. *Held* that the nearest reversionary heir to the widow's late husband was entitled to succeed on the death of the widow.

Quære whether in these Provinces a Hindu widow can accelerate the estate of the heir by conveying absolutely and destroying her life estate? **Raj Kishore v. Dura Charyan Lal**. A. W. N. (1906), 272 = 3 A. L. J. 754.

STANLEY, C.J. & KNOX, J.

References.—19 C. 236, 6 A. 116, R.

(5) *Remarriage—forfeiture of interest in the estate of first husband—Transferees from a person not entitled to transfer; right of—See Act XV of 1856 (WIDOW REMARRIAGE), No. 1. 3 A.L.J. 729.*

Hindu Law.—(Continued).**29.—(Widow).—(Continued).**

(6) Legal necessity for alienation by, consent of reversioners how far evidence of—See **HINDU LAW (REVERSIONERS)**, No. 2, 9 O.C. 104.

(7) Right of—to maintenance when she has property of her own—See **HINDU LAW (MAINTENANCE)**, No. 2, 4 C.L.J. 74.

(8) Maintenance of—whether a charge on husband's estate—See **HINDU LAW (MAINTENANCE)**, No. 2, 10 C.W.N. 1074.

(9) Whether order on previous application for revocation of Probate or letters by Hindu Widow binds reversioners—See **ACT V OF 1881 (PROBATE AND ADMINISTRATION)**, 9, 10 C. W.N. 955.

(10) Alienation by—Suit by reversioner to recover property—Limitation—See **LIMITATION ACT**, No. 55, 8 Bom. L.R. 675.

(11) Land granted to coparceners—for maintenance —Resumability—Presumption—See **(HINDU LAW)**, No. 17, 16 M.L.J. 352.

(12) Effect, on the right of reversioners, c. a decree fairly obtained against a widow in possession—See **HINDU LAW (REVERSIONERS)**, No. 1, A.W.N. (1905), 270=2 A.L.J. 843.

(13) *Savings from husband's estate, right of widow in respect of accumulations from—Alienation of property acquired from such funds, whether reversioners entitled to impeach.*

Suit by reversioners, to set aside certain alienations made by a widow. *Held*, that a Hindu widow, having purchased lands with the money derived from the income of her husband's estate, has the right to alienate the land, reconvert it into money and deal with it in any manner whatsoever; and there is no distinction in principle between her power of disposal of the savings so long as they remained in coins or notes and that over such of the savings as she had chosen to convert into immovable property. Consequently, the fact that she has invested the accumulations in landed property cannot, by itself, establish her intention to make such property an accretion to her husband's estate. (a).

In the present case, the widow, not only did not express any intention to add her acquisition to the husband's estate, but expressly treated them as at her absolute disposal; it was *held*, therefore, that the reversioners were not entitled to relief so far as regards such properties.

Hindu Law.—(Continued).**29.—(Widow).—(Concluded).**

As to properties, however, which had, admittedly, belonged to her husband and was left to her at his death, she was held entitled only to life-interest. She could not get, as to them, the absolute power of disposal, contended for on the ground that the husband had given away or devised them over to her, since, even under a gift or will of the husband, unless it contains specific words of inheritance, a wife takes only the ordinary woman's estate in property inherited from males (b). **Sankara Murthia Pillai Sivasailom Pillai v. Oppanayana Nachiyar Ammal**, 21 T.L.R. 56.

SADASIVA Aiyar, C.J., and GOVINDA PILLAI, J.

References.—(a) 10 C. 324, D. 14 C. 387, 861; 20 C. 493, 10 B. 476, 25 M. 357, 28 M. I, R.

(b) 5 C. 684, 11 B. 573, T. M. 387, 14 M. 274, 22 B. 409, 27 M. 498, 27 A. 364, R. 19 T. L. R. 255 (F. B.), F.

See, also, I, 518-520; *Act XV of 1856 (Imperial)*, No. 1.

Hindu Law (Adoption), Nos. 4, 5, 9.

Hindu Law (Alienation), Nos. 6, 8.

Hindu Law (Maintenance), No. 4.

Hindu Law (Reversioners), Nos. 2, 10, 17.

Hindu Law (Stridhanam), Nos. 1, 4.

Hindu Law (Succession), No. 3.

Hindu Law (Will), Nos. 2, 8; *Limitation Act*, Nos. 76, 100, *Misjoinder of Causes of action*, No. 2; *Transfer of Property Act*, No. 70.

30.—(Will).

(1) *Wajibul-arz—Entry verified—Verifier's estate, if bound—Will.*

An entry in a *Wajib-ul-arz*, which a person has verified, cannot, by reason of such verification, be regarded as his will or as a document of a testamentary character by him.

A rule of succession laid down therein cannot bind his estates after his death. **Sahodra v. Ganesh Parshad**, 10 C.W.N. 249=1 M.L.T. 64 (F. C.)

LORD MACNAGHTEN, SIR FORD NORTH, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

(2) *Construction—Gift to idol, if absolute—Provisions of will—interest of heirs.*

On the construction of a Will of a Hindu testator, which provided, after the appointment

Hindu Law.—(Continued).**—30.—(Will).—(Continued).**

of executors in cl. 1, for certain legacies in cl. 2, and then in cl. 8 all the other estates of the testator were dedicated to his family idol, and, in the six following clauses provisions apparently inconsistent with an absolute dedication to the idol, were made, viz., provision for the maintenance, out of the income of the estate, of the testator's wife and other relations, provision for the marriage of his daughters, for their residence and maintenance, &c., and finally in cl. 10 it was provided that the estate would remain vested in the family idol, that no one shall be heir thereto and that the properties shall not in any way be disposed of for any kind of debt of any person.

Held, that there was an absolute gift of the entire estate to the idol, left after the payment of the legacies specified, and subject to the dispositions and payment of the expenses incidental thereto mentioned in the intermediate clauses of the will (a). **Srinibash Das v. Memmohini Dasi**, 3 C.L.J. 224.

RAMPINI and MOOKERJEE, JJ.

Reference.—(a) (1879) L.R. 6 I.A. 182, D.

(3) *Construction of—Direction as to accumulation—validity of—*

It is not incompetent for a Hindu testator to direct accumulations.

Principles governing the validity of directions for accumulation examined and explained. **Rajendra Lal Agarwalla v. Raj Coomari Dahi**, 11 C.W.N. 65.

HARINGTON, J.

References:—1 C.W.N. 345=24 C. 589; on App. 2 C.W.N. 389=25 C. 662 and 4 C. 448, B.

(4) *Construction of—Appointment of Shebait to take effect after due administration of estate—Intention of testator—"Senior in age among my lineal descendants and heirs," meaning of—Possibility of such a person not being in existence at death of testator.*

Where a testator's will provided that the senior in age among his lineal descendants and heirs was to take charge, as *shebait*, of trust property dedicated to the worship of an idol, after the due administration of his estate by the executors, and it was contended that possible and not actual events must be taken into account and that, following the rule in the case of *Tagore v. Tagore* (a), the gift was

Hindu Law.—(Continued).**—30.—(Will).—(Continued).**

bad as the senior in age amongst the lineal descendants might not be in existence at the death of the testator.

Held, that the principle adopted in the case of *Tagore v. Tagore* and *Gnanasambanda Pandara Sannadhi v. Vela Pandaram* does not apply. **Sissaswar Prasanna Sen v. Bhagbati Prasanna Sen**, 3 C.L.J. 606.

MACLEAN, C.J. and HARINGTON and BURNETT, JJ.

Reference.—(a) Q.B.L.R. 377, B.

(5) *Construction of bequest of life-interest to woman—Life estate.*

A Hindu executed a will in favour of his daughter-in-law (son's widow) in these terms:—"I have no *aulad* (meaning no male child, for he had a daughter) and, therefore, make this Will, in favour of my daughter-in-law, to the effect that, all the movable and immovable property, which is in my possession, at the time of executing this will, and any other property which may come into my possession in my lifetime or to which I may become entitled, shall, after my death, remain in the proprietary (*malikana*) possession of the devisee, and the said devisee shall be the owner (*malik*) of all the bequeathed property, and it shall be incumbent on the devisee to perform my funeral rites after my death....., the devisee shall be owner of the property that is left after the funeral rites, &c., the devisee has power in case a my not adopting anyone in my life-time to adopt, after my death, any person of my family whom she may think fit., if any of my relations and heirs or any strangers claim the bequeathed property from the devisee then that claim shall be false."

After the death of the devisee, the plaintiff, a grandson of the testator's brother, brought a suit for possession of the property bequeathed to her by the testator against the testator's daughter and certain descendants of one of his heirs. The question for determination was whether, under the Will, the daughter-in-law took an absolute estate, or only a life-interest.

Held, that, having regard to the context and the rules for the construction of Hindu wills, the will, under consideration conferred only a life-interest upon the devisee (a). **Krupanarayana Salta v. Kashi Nath**, 9 O.C. 119 (B).

SCOTT and WELLS, J.Cs.

Hindu Law.—(Continued).**—30.—(Will).—(Continued).**

References.—(a) 2 I.A. 7, 11 B. 69, 10 A. 16, 17 B. 808, 10 C. 343, 9 C.W.N. 809, 25 A. 351, 10 A. 495, 28 A. 809, 2 O.C. 226, 19 A. 183, 24 C. 384, 27 C. 44, 27 C. 649 & 10 A. 495, B.

(c) *Construction of will—Estate vested in interest as well as in possession—Intestacy—Indian Succession Act (X of 1865), S. 159—Intention of the testator.*

Where it is possible to put a reasonable construction upon a will which results in a testacy that construction must prevail, rather than one, which leads to an intestacy (a).

On the construction of the will of a Hindu, which provided that, on the death of the testator, his estate was to pass into the possession of his two widows and his nephew who were to hold it, without powers of alienation, in equal shares and further that, on the death of the senior widow, the nephew was to hold half of the whole estate and on the death of the second widow, the nephew was to have the whole estate absolutely.

Held, that the widows were to have life-interests in certain defined shares, varying from time to time, and subject to such life-estate, the nephew was to take an absolute interest in the whole; that, on the death of the senior widow, the nephew had a vested interest in half of the property, though the actual enjoyment of that expectant interest was postponed till the termination of the junior widow's life-estate, but that, as regards the other half, it was vested in interest as well as in possession in the nephew; and that, therefore, on the subsequent death of the nephew, his heirs were entitled, as against the junior widow, to possession of half of the testator's estate.

S. 150 of the Indian Succession Act does not apply where there is a clear indication of the intention of the testator.

Quære, whether the clause imposing a restraint upon alienation was valid and legally operative? *Mandakini Debi v. Arunbala Debi*, 8 O.L.J. 515.

RAMPINI and MOOREHEAD, JJ.

Reference.—(a) 80 Ch. D. 390, F.

(7) *Construction*—*Kul Mailk.*

One of the clauses of a will provided: "as to shop 1 (in number) which there is in Madhav-pura, the same realizes a rental of Rs. 90 per year. My wife Devkor shall take the rent of

Hindu Law.—(Continued).**—30.—(Will).—(Continued).**

the said shop. Should perchance anything have to be paid to my creditors, then my wife shall sell the said shop and pay (the defendant). She is the sole owner of the said shop." *Held*, on a consideration of the whole will, that the testator meant by the above clause to pass to his widow an absolute estate in the house. *Lalbahai Mulchand v. Mansukh Raichand*, 8 Bom. L.R. 482.

JENNENS, C.J. and AARON, J.

References.—21 B. 376, 2 I.A. 7 (14) and 27 C. 649, R.

(8) *Enforcement of claim under a will made by a Hindu, relating to immovable property in Central Provinces—Probate of will under the Probate and Administration Act, whether necessary.*

The only Act of the Legislature, which provides for the grant of probate in respect of the Hindu wills in the Central Provinces is the Probate and Administration Act, 1881. That Act does not embody any provisions similar to those of S. 117, Indian Succession Act, and the Hindu Wills Act of 1870, which extends that section to Hindus, is in force only in the territories subject to the Lieutenant-Governor of Bengal and in the towns of Madras and Bombay. The consequence is that a person who claims under a will made by a Hindu in the Central Provinces and relating to immovable property there situated need not obtain probate of the will before instituting his claim. *Mt. Ketki v. Kamal Loohan Fajari*, 2 N.L.R. 128.

DRAKE-BROCKMAN, OFFG. J.C.

References.—18 A. 260, 21 B. 563, 17 C. 272 and 14 M. 454, R.

(8-a) *Birth of posthumous son—Applicability of doctrine of implied revocation to Hindu wills.*

Where a Hindu, 7 days before his death, willed away all his self-acquired property, not knowing that his wife was *enclinte* at the time of making the will, and so, the will did not contain any provision for the posthumous son:—

Held per Subramania Aiyar, J.

That the birth of the son has the effect of revoking the will, if it does not appear that the omission to provide for the son was intentional, and the doctrine of implied revocation applies to

Hindu Law.—(Continued).**—30.—(Will).—(Concluded).**

the case. Bearing in mind the extreme importance attached to the existence of male issue by every Hindu on religious and other grounds, and the unlikelihood, as a rule, of a Hindu father contemplating the total disinheritance of his son, even with reference to his self-acquired property, it is reasonable to lay down that the will is revoked, in point of law, by the birth of male issue. Although the Indian Succession Act has not provided for implied revocation of the kind, it is the province of the Courts, in deciding new cases as the present, to apply recognised principles of general law bearing on the matter, leaving it to the Legislature to change the law, if it should deem fit to do so.

Per Moore, J. (Contra):—

There is no authority, either in the Hindu Law before it was modified by Courts of Law of legislation, or in any of the judicial decisions, for the proposition that, by the birth of a posthumous son, a Hindu's will is revoked. The effect of S. 56 of the Succession Act, read together with Ss. 2 & 3 of the Hindu Wills Act, is to lay down that the English Law as to revocation of the will, by the marriage of the testator etc., does not apply to the will of a Hindu. **Subba Reddi v. Doraisami Bathan**, 16 M.L.J. 491.

SUBRAMANIA AIYAR & MOORE, JJ.

References:—25 I.A. 54, 8 C. 637, 28 M. 867, R.

(9) Married daughter, estate taken by a, under a will and by inheritance—Status of a daughter with an adopted son—See **INTEREST**, No. 3, 3 C.L.J. 502.

(10) Right of Hindu daughter, a next reversioner, to sue for construction of will of father and for declarations incidental thereto—See **SPECIFIC RELIEF ACT**, No. 10, 3 C.L.J. 224.

(11) Hindu will speaks from the date of death—Presumption as to destruction of wills in India and in English Law. See **WILL**, No. 7, 3 A.L.J. 747.

(12) Right of a woman to alienate, by will, her *Sridhan*, other than *Saudayika* during coverture—Husband's consent, necessity of—See **HINDU LAW (SRIDHAN)**, No. 5, 7 Bom. L. R. 986.

See, also, I, 520-528; Act V of 1881 (Probate and Administration), No. 10; Hindu Law (Adoption), No. 2; Hindu Law (Self-Acquisition), No. 2.

Hindu Law.—(Concluded).**—31.—(Woman's estate).**

Mere transfer of—does not amount to a loan of money unless and until money is actually realised thereon—See **LIMITATION ACT**, No. 50, A.W.N. (1905), 181.

See, also, I, Hindu Law (Sridhanam), No. 2.

Hindu Wills Act.

Ss. 2, 3, effect of, read together with S. 56, Indian Succession Act—Doctrine of implied revocation—See **HINDU LAW (WILL)**, No. 8-a, 16 M.L.J. 491.

Holiday.

Hearing of case fixed for a, on arrangement with parties—Duty of parties to attend on such day—See **CIV. PROC. CODE**, No. 89, 111 P.R. 1906.

Holidays.

(1) *Date of performance—Act done under Law or by order of Court or by agreement of parties—Court closed on last day—Extension of time.*

If the law or Court directs a thing to be done within a period fixed by it and it is impossible of performance on the last day fixed, for no fault of the party required or directed to do the Act, it will be recognised as properly, done, if it is done on the next day it is possible for performance.

Where, by a compromise-decree, a certain sum of money was to be paid to the plaintiff's pleader or deposited in Court within the 8th October and a part of the money was paid to the plaintiff's pleader in time but the balance not paid or deposited till the 10th November, the first open day after the vacation, which commenced on the 8th October, when it was deposited in Court.

Held, the deposit was a valid one, as the deposit could not be made on the 8th October and subsequent days through no fault of the party. **Surendra Narayan Mustafi v. Souravini Das**, 3 C.L.J. 339—10 C.W.N. 535.

MITRA and GEIDT, JJ.

References.—3 W. R. 223, 22 M. 179, 18 C. 231 and 18 C. 631, F.

House.

Land necessary for convenient use of, right of Government to acquire—See **ACT I OF 1894 (LAND ACQUISITION)**, No. 2, 9 U. C. 811.

Hundi.

See, I, 529 and Limitation Act, No. 64.

Husband.

Imputation of sorcery against wife not defamatory of—*See* DEFAMATION, No. 2, 4 C.L. J. 390.

Husband and Wife.

(1) *Petition by husband for dissolution of marriage—Claim for damages against co-respondent—Death of respondent, effect of—Abatement.*

Where in a proceeding for dissolution of marriage in which the husband was petitioner and damages were claimed against the co-respondent, the pleader for the respondent informed the Court that his client had died; *held* that the petition was liable to be thrown out on the ground that it abated by the death of the respondent.

Also since damages could not be decreed in such a case unless upon dissolution of the marriage by order of the Court; the abatement of the petition entailed abatement of the claim against the co-respondent for damages. *S. V. S. & B., 60 P.R. 1906.*

REID, J.

See, also, I, 529 and Buddhist Law, No. 5.

Idiot.

Marriage with an, validity of—*See* IV ACT OF 1869 (DIVORCE), No. 2, 8 Bom. L.R. 932.

Idol.

See, I, Hindu Law (Will), No. 5.

Illegitimate children.

Whether—are within the scope of the Indian Succession Act—*See* ACT X OF 1865 (SUCCESSION), No. 1, 8 Bom. L.R. 322.

Illiterate Person.

See I, Will, No. 1.

Immovable property.

Whether lease to cut trees in a forest is a transfer of interest in—*See* REGISTRATION ACT (III OF 1877), No. 5, 3 A.L.J. 138.

See, also, I, Limitation Act, No. 43, and Registration Act, No. 2.

Improvements.

Right of mortgagee, in a suit for redemption, to costs of—*See* TRANSFER OF PROPERTY ACT, No. 55, 9 O. C. 18.

See, also, I, Landlord and Tenant, No. 12.

Inam.

(1) *Deed—Grant—Inam lands, resumption of—Construction of deed—Presumption—Maintenance grant—Reversion of Inams.*

There were certain inam lands in village V, which village A (a Zemindar), by a deed of 1890, granted to his younger brother, the predecessor in title of the 2nd defendant. The inam was granted for the upkeep of a tank in V and of a tank in village S which was not comprised in the grant of 1890. In Sept. 1892, the lands were sold to B (1st defendant) subject to the obligation to maintain the tanks and, in Nov. 1892, B surrendered the inam lands to the 2nd defendant on the ground that he was unable to repair a breach of the tank in V and the second defendant accepted the surrender. But, in 1901, B (1st defendant) sold the lands to the plaintiff, and plaintiff now sued to recover them. The question was whether the 2nd defendant was entitled to resume the lands in 1892. The plaintiff contended that the grant of 1890 did not convey to the 2nd defendant's predecessor in title the proprietary right to the village V, that, if it did, the grant, being a grant by way of maintenance, only endured during the continuance of the time of him for whose benefit the grant was made and that in any view the grant did not vest in the 2nd defendant's predecessor the right to resume the lands on a forfeiture by the holder of the lands. *Held*, upon the construction of the grant of 1890 and on other evidence, that the 2nd defendant was entitled to resume in 1892 and that the 1st defendant, when he purported to convey to plaintiff in 1902, had therefore no title to convey.

Prima facie in the absence of some specific provision to the contrary, the grant of a village would include the right to resume the inam lands situated in the village. The grant being made for settling the younger brother's claim to a share in the family property and for providing for the maintenance of his branch of the family, it is unlikely that the grantor, whilst conveying the village itself, would reserve to himself the right to resume the inams situated in the village.

Obiter. It may be that, on the extinction of the 2nd defendant's branch of the family, the whole of the subject matter of the grant of 1890 will revert to the grantor's successors in

Inam.—(Concluded).

title. *Munshami Reddi v. Pothil Yenklah*, 16 M.L.J. 369.

WHITE, C.J., and BRANSON, J.

See, also, I, 530-531; *Hindu Law (Alienation)*, No. 6.

Inamdar.

Exchange of *patta* and *muchilika* between superior landholder and Inamdar holding under him—See ACT VIII OF 1895 (RENT RECOVERY, MADRAS), No. 3, 16, M. L. J. 489.

Inconsistent pleadings.

A plaintiff alleging invalidity of a mortgage cannot, afterwards, be heard to say that the defendant was holding as mortgagee—See *Esrofful*, No. 1, 16 M.L.J. 5.

Indian Companies Act.

See ACT VI OF 1882.

Indian Majority Act.

See ACT IX OF 1875.

Indian Succession Act.

See ACT X OF 1865.

Inheritance.

(1) *Right of murderer and his descendants to inherit to the murdered—Public policy.*

Suit for the possession of the estate of a murdered man by the minor son of the murderer, who was the paternal uncle of the victim. It was found that the murder was committed with the object of securing the deceased's property and post of *lambadar*. *Held*, that the father of the plaintiff was clearly incapable of succeeding to the victim's property (a) and so the son was also excluded. This is so under the Customary Law as well as under the Mahomedan Law (b). Nor would the plaintiff be entitled to succeed on his father's death. *Muhammad Khan v. Sis Bam*, 41 P. R. 1906=95 P.L.R. 1906.

CHATTERJEE and KENSINGTON, JJ.

References.—(a) 74 P. R. 1900, F. (b) 18 P. R. 1895 (F.B.) and P. L. R. 1900 (Cr.) 85, R.

(2)—in Ludhiana, to estate of a deceased adopted son—Heirs of adoptive father not those of the deceased son entitled to succeed—See *Symptoms (PECULIAR TO PUNJAB)*, No. 55, 117 F.R. 1906.

(3) Right of widow to inherit along with stepson, among Arains of Ludhiana—See *Customs (PECULIAR TO PUNJAB)*, No. 54, 116 P.R. 1906.

Injunction.

(1) *Temporary injunction—Mining operations commenced by defendant under bona fide claim of title—Loss to plaintiff from non-cultivation—Balance of convenience—Standing by—Principles on which temporary injunction should be granted.*

The defendant company, acting under a bona fide claim of right, began to cut an incline and sink a pit, for the purpose of working the minerals in certain lands and had already finished constructing a railway siding, when the plaintiffs sued for a declaration of their underground rights in the said lands and for a permanent injunction restraining the defendant company from interfering with the same. They, also, applied for a temporary injunction pending the hearing of the suit restraining the defendant company from proceeding with the boring operations, on the allegation that the lands were being rendered unfit for cultivation thereby. The Court of first instance granted a temporary injunction mainly on the ground that the object of the suit would be frustrated if the defendant company were allowed materially to alter the features of the locality.

Held, that, in making this order the Court had overlooked certain material considerations.

The balance of convenience in this case was in favour of the defendant company being allowed to continue the mining operations. The loss caused to the company by stoppage would be out of all proportion to the loss apprehended by the plaintiffs, specially as the plaintiffs (of whose title there was no evidence) would, if successful, be able to recover damages from the company, which was a substantial one and which did not enter as a mere wanton trespasser. Moreover, it appeared that the plaintiffs stood by for a considerable time whilst the defendant company was spending a large amount of money over the works sought to be stopped. This is a circumstance of considerable importance in dealing with an application for injunction specially in the case of a mining company. *Singarn Coed Syndicate, Ltd. v. Indra Nath Chatterjee*, 10 C.W.N. 173.

(2) *Building by stranger on another's land—Right of owner to recover the land on removal of building—Owner entitled to mandatory injunction.*

Plaintiff alleged that defendant had committed an encroachment by pulling down an old wall and by constructing a new one, partly

Injunction.—(Continued).

on his own land and partly on land belonging to the plaintiff, and prayed for possession of his land on removal of the encroachment. Both the lower Courts found that the defendant had encroached, as alleged, but passed decrees awarding only compensation to the plaintiff; on the question, whether the plaintiff could claim a mandatory injunction or whether an award of compensation would afford an adequate measure of relief. *Held*, relief by way of compensation in such a case as the present one is tantamount to allowing a trespasser to purchase another man's property against his will (a). "It is a well established law in England that, if a stranger builds on the land of another, although believing it to be his own, the owner is entitled to recover the land with the building on it, unless there are special circumstances amounting to a standing by so as to induce the belief that the owner intended to forego his right or to an acquiescence in his building on the land. This is also the law in India, with the exception that the party building on the land of another is allowed to remove the building" (b).

In the present case, defendant has not even alleged any circumstances, which could give rise to an equitable estoppel and the relief asked for in the plaint should, therefore, have been decreed to plaintiff. **Seth Mohan Lal Parwar v. Choudhri Chunni Lal Parwar**, 2 N.L.R. 4.

ISMAY, J.C.

References.—(a) 28 B. 298, F. (b) 20 B. 298, F. 20 A. 845, Distd; 43 L.J. Ch, 790 and L.R. 1 H.C. 129, R.

(8) Water-course, obstruction of—Injunction, mandatory and permanent.

When a watercourse has been illegally obstructed and completely effaced, the party injured is entitled to a mandatory injunction to compel the restoration of the water-course to its natural form, and also to a permanent injunction to restrain the defendant from repeating the wrongful act. **Balabhadra Persad Singh v. Najiban alias Basmatia**, 4 C.L.J. 370.

RAMPINI and MOOKERJEE, JJ.

Reference:—40 N.Y. 191, F.

(4) Decree for perpetual.—Application for execution of.—Notice to judgment-debtor, whether necessary.—Relief not prayed for, whether allowable.—See Civ. Pro. CODE, No. 101, 3 C.L.J. 112.

(5) Art. 179 of the Limitation Act does not apply to an application to execute a decree

Injunction.—(Concluded).

granting.—See LIMITATION ACT, No. 729, A.W. N. (1906), 10.

(6) Suit for—against a Municipal Board for a threatened act.—Notice of suit, necessity for.—See ACT I OF 1900 (N.W.P. and OUDH MUNICIPALITIES), No. 1, A.W.N. (1906), 107.

(7) When—is not a consequential relief within the meaning of S. 42 of the Specific Relief Act.—See SPECIFIC RELIEF ACT, No. 11, 3 A.L.J. 316.

(8) Father and son governed by Dayabhaga School of Hindu Law.—Improvement by son of family house out of his earnings.—Father's right to turn son out of the house and obtain an.—See HINDU LAW (DAYABHAGA), No. 1, 10 C.W. N. 765.

(9) Power of Mamlatdar to grant—in case of obstruction or disturbance to the use of roads or customary ways.—See ACT III OF 1876 (BOMBAY MAMLATDARS), No. 1, 8 Bom. G.L.R. 312.

(10) More licences permitted to use a piece of land as a cremation ground, whether entitled to decree for injunction in respect of the land.—See LICENCE, No. 1, 8 Bom. L.R. 310.

(11) Suit for demolition of buildings.—Interference with injunction granted by Lower Court.—See SPECIFIC RELIEF ACT (I OF 1877), No. 17, A.W.N. (1906), 221.

(12)—to prevent disturbance of easements of light and air Substantial damage, material interference with physical comfort.—See EASEMENTS ACT (V OF 1882), No. 3, 30 B. 319.

See, also, 1, 531-534: Cir. Pro. Code, Nos. 262, 305; Co-sharers, No. 7; Easements, Nos. 1, 2, 3; Easements Act (V of 1882), No. 5; Hindu Law (Reversioners), No. 10; Jurisdiction (of Civil Courts), No. 14; Landlord and Tenant, No. 6; Nuisance, No. 1; Right of Suit, No. 22; Specific Relief Act, No. 21, Trade Mark, No. 1.

Injunction (Mandatory).

(1) Right of landlord to, in respect of a building erected by tenant—Landlord precluded by his conduct from claiming the injunction.—Discretion of Court.—Stranger building on land with permission of tenant.

Where the tenant of an agricultural holding constructs a building of a character not suitable

Injunction (Mandatory).—(Concluded).

ble to such a holding, with the knowledge of the landlord, it is the landlord's duty, not only to object to its construction, but also to take legal proceedings to stop the progress of the work. If he does not do anything of that kind, but allows the building to be completed, he is not afterwards entitled to a mandatory injunction for its demolition (a).

Where a person is admittedly the holder of the *Kuditarum* right, and another enters into an agreement with him, whereby that other is allowed to build on the land, that other, though not himself the tenant, is nevertheless, not in the position of a wrong-doer. **Ulagappan Ambalam v. Chidambaram Chetty**, 29 M. 497.

SUBRAIMANIA AYYAR & BENSON, JJ.

References :—(a) 16 C. 252, S.A. No. 959 of 1901 (unreported, but noted in 29 M. 500), *F. Insanity*.

(1)—of decree-holder when cannot save limitation for execution of decree—See **LIMITATION ACT**, No. 15, 72, P.L.R. 1906.

(2) See **HINDU LAW (INHERITANCE)**, No 4, A. W.N. (1905), 265.

See, also, *I, Contract Act, No. 2 ; Hindu Law (Inheritance), No. 5.*

Insolvency.

(1) *S. 36—Order to examine witnesses—Right of witnesses to appear by Counsel to shew that the order is prejudicial to his interests.*

A person, to examine whom as a witness an order has been passed by the Court under S. 36 of the Indian Insolvency Act, 1841, is entitled, as of right, to appear by Counsel and to satisfy the Court that the order passed *ex parte*, was erroneously made. But, after once the order has been made, the party complaining of it ought to take out a rule to have it set aside.

It is not the right procedure to apply for its revocation just before the commencement of the examination without any previous notice to the other side. *In re Manekji Cawasjee*, 8 Bom. L.R. 85 = 1 M.L.T. 50.

CHANDAVARKAR, J.

Reference.—Petition No. 448 of 1905, *Expl.*

(2) *Petition for, filed in Calcutta Court—Adjudication in bankruptcy proceedings in England, steps in the Calcutta Court in aid of—Public examination of applicants, how conducted.*

Some of the members of a firm filed a petition in insolvency in the Court at Calcutta,

Insolvency.—(Continued).

Certain other members having been declared bankrupts in Bankruptcy proceedings in England, the Trustee in Bankruptcy, there, moved the Calcutta Court and obtained an order that the proceedings in the latter Court should be 'in aid of' the said proceedings in England. At the hearing of the application for personal discharge in the Calcutta Court, it was held, that the Official Receiver and the Trustee in the Bankruptcy Proceedings in England were only entitled to appear, in so far as they applied to carry out the order 'in aid,' and that they had no *locus standi* to oppose the application for personal discharge. *Held*, also, that the public examination of insolvents made in Calcutta at the request of the English Bankruptcy Court must be conducted by appointment of a Commissioner, upon petition in the ordinary way, to take the evidence for transmission to the English Court. *In the matter of Isaac Shrager*, 33 C. 1062.

SALE, J.

(3) *Jurisdiction of the High Court—Order of Insolvency Court, if judgment of High Court—Suit on order for costs awarded by Insolvency Court, if maintainable—C. P. Code, S. 244—Limitation (Act XV of 1877), Sch. II, Art. 122—Interest.*

An order of the High Court, in the exercise of its insolvency jurisdiction, is a judgment of the High Court and a suit based upon such an order is maintainable (a).

Such a suit is governed by Art. 122, Sch. II. of the Limitation Act.

The plaintiff sued to recover the amount of costs due under an allocator issued by the Registrar of the Calcutta High Court on the 7th of September, 1902, in respect of certain costs ordered by the Court in its insolvency jurisdiction on the 1st of June, 1892. The order did not provide for payment of interest.

Held, that the plaintiff was not entitled to interest on the amount. **Annoda Prasad Banerjee v. Nobe Kishore Roy**, 9 C.W.N. 952 = 33 C. 560.

SALE, J.

References.—(a) 16 L. A. 156 = 18 B. 520 and 7 C. 74 = 9 C. L. R. 357, *Refd. to*.

(4) *Protection of judgment-debtor, who has applied for—in one suit from arrest in execution of other decrees—See Civ. Pro. Code, No. 203, 9 O. C. 42 (B).*

Insolvency.—(Concluded).

See, also, I, 534, 535; Practice (Mis. Cases), No. 1.

Insolvency Act (St. 11 & 12 Vic., ch. 21).

- (1) *S. 9—Adjudication of an insolvent—Departure of the person from jurisdiction with intent to defeat for delay the creditors.*

The jurisdiction to adjudge that a person has committed an act of insolvency only arises when a petition complying with the conditions set forth in S. 9 of the Act has been presented. It is, therefore, necessary to ascertain whether a person sought to be adjudicated an insolvent departed from the jurisdiction of the High Court with intent to defeat or delay his creditors or with like intent departed from his usual place of business or abode within the jurisdiction. **Abu Haji Sulleman v. Haji Jan Mahomed Haji Mahomad**, 8 Bom. L. R. 648.

JENKINS, C. J. and BEAMAN, J.

See, also, I, 533, 536.

Insolvency Act (St. 41 & 42 Vic., ch. 42.)

- (1) *S. 31—Effects of an insolvent—Sale by Official Assignee—Sanction of the Court—Power of Court to set aside completed sale—Practice.*

Under the Indian Insolvent Act, the Official Assignee has full power to sell the property and effects of an insolvent, and it is his duty to make sale of the same with all convenient speed. The sanction of the Court to the sale is not necessary.

S. 31 of the Act does not vest the Court with power to set aside completed sale. **R. S. Woonwalla & Co. v. N. C. Macleod**, 8 Bom. L. R. 470 = 30 B. 515.

JENKINS, C.J. and BATTY, J.

Insolvent Debtor's Act of 1848.

- (1) *S. 24—Preference of one creditor not fraudulent.*

A person in insolvent circumstances may dispose of his property in favour of one creditor even though the act may have the effect of disappointing other creditors. Where a debtor two months before insolvency transferred part of his property to a creditor in preference to others, *held*, that the conveyance was not fraudulent within the meaning of S. 24 of the Act, and could not be impeached. **The Official Assignee of Bombay v. Brij Kishore**, 3 A. L. J. 604 = A. W. N. (1906), 250.

STANLEY, C. J. and KNOX, J.

Reference.—2 A. 474, F.

Inspection.

See, I, Civ. Pro. Code, No. 91.

Insurance.

See I, 518, 539.

Interest.

- (1)—*accrued due not affected by damduput.*

A suit against a Hindu debtor for interest actually and legally accrued is not barred because the principal sum lent has been paid off.

The rule of *damduput* does not divest rights that have accrued; it merely limits accruing rights. **Nusserwanji Cowasji v. Luxman Bhikaji**, 8 Bom. L. R. 82 = 1 M. L. T. 49 = 30 B. 452.

SIR LAWRENCE JENKINS, C.J. and BATTY, J.

- (2) *Mortgage-deed—Date fixed for repayments of debt—Distinct covenant to pay interest at a stipulated rate—Right to claim interest after the due date for the principal.*

The mortgage-deed sued on stipulated for repayment of the mortgage-money within a year and also stated that interest thereon was payable by mortgagor at the rate mentioned therein. The agreement with regard to interest was distinct from, and independent of, the covenant for the repayment of the mortgage-money and there was nothing to show that the rate of interest was intended only for the period of one year fixed for the repayment of the principal. Reversing the decrees of the lower Courts, which allowed the mortgagee-plaintiffs interest at the specified rate only for one year and decreed *post diem* interest by way of damages for a period of six years, *held*, ordinarily when a rate is fixed for interest, it is to be paid until the debt itself is repaid unless there are clear grounds for deciding the rate to hold good only up to the time appointed for the repayment of the principal and in this case accordingly plaintiffs are entitled to claim interest at the stipulated rate for the entire period their mortgage-money had remained outstanding. **Radha Kishen v. Karim-ulla**, 92 P. R. 1905 = 50 P. L. R. 1906.

CHATTERJI and JOHNSTONE, JJ.

Reference.—77 P. R. 1898, R.

- (3) An adopted son holds precisely the same position as a son born as regards inheritance from the adoptive mother's relation.

A childless daughter of a testator attains the status of a daughter with a son by adopting a son.

Interest.—(Continued).

Where the failure of the bequest to the adopted son is due to the fact that the testator did not live to adopt a son himself, and to the fact that the power of adoption given by the will is void under the Hindu law, and not to the legal invalidity of the bequest:

Held, that such failure of the bequest to an adopted son does not render the subsequent bequest to the daughter of the testator void. **Radha Prosad Mullick v. Rani Moni Dassee & Peary Lal Mullick v. Rani Moni Dassee**, 8 C.L.J. 502=10 C.W.N. 695=38 C. 947.

MACLEAN, C.J., SALM, HARRINGTON, MITRA and MOOKERJEE, JJ.

References.—5 C. 615 and 10 I.A. 188 F.

(4) *Execution of decree granting mesne profits—Interest whether allowable when not provided for by decree.*

Where a decree for recovery of possession of immovable property granting mesne profits during the dispossession of the decree-holder, the amount of such mesne profits being left for determination in execution of the decree, made no provision for interest on the amount: *Held*, the principle upon which the judgment of the Judicial Committee in *Girish Chander Lahiri v. Sasi Sekharswar Roy* (a) proceeded upon the matter of interest in the case is a principle which is applicable not only to the period down to the date of the delivery of possession, but also to the period subsequent thereto and the decree-holder is entitled to interest upon the mesne profits due to him, until such mesne profits are actually paid to him by the judgment-debtors. **Girish Chander Lahiri v. Sasi Sekharswar Roy**, 33 C. 329.

GHOSE and GRIDT, JJ.

Reference.—(a) 27 C. 951, F.

(5)—*claim for, when usufructuary mortgagee does not take possession of mortgaged property—Mortgage.*

Where a usufructuary mortgagee does not take possession of the mortgaged property and thereby loses the profits which he would have otherwise obtained he cannot, subsequently, claim interest in lieu of those profits. **Bhawani Parshad Singh v. Sahib Din Lal**, 9 O.C. 144.

SCOTT, J.C.

References.—17 B. 425, B.P.P.J. (1877), 169. R.

(6) *Mortgage-decree—Date of realisation,—date of sale or date of confirmation thereof.*

Interest.—(Continued).

A mortgage-decree having provided for payment of interest up to the date of realisation, the question for decision was whether the date of realisation mentioned in the decree was the date of the sale under it or that of confirmation thereof. *Held*, that the mortgagee was entitled to interest up to the date of the confirmation of the sale. **Megraj Marwari v. Nursing Mohan Thakur**, 33 C. 346.

MACLEAN, C.J. and GRIDT, J.

Reference.—28 B. 264, R.

(7) *Compound—provided for by a subsequent clause in a mortgage-deed—Previous clause as appropriate for a usufructuary mortgage—Construction of deed—See MORTGAGE (CONSTRUCTION), No. 1, 10. C.W.N. 266.*

(8) *Mortgage-decree—Interest up to what time and on what basis to be calculated—See CIV. PRO. CODE, No. 93, 8 C.L.J. 188.*

(9)—*at the contract rate under a mortgage, due even beyond the date fixed by the decree for payment and up to date of realisation—See TRANSFER OF PROPERTY ACT, No. 75, 8 C.L.J. 85.*

(10) *A contract to pay—at rate higher than 12 per cent., on rent is against the Bengal Tenancy Act and is not enforceable—See ACT VIII OF 1885 (BENGAL TENANCY), No. 27, 8 C. I.J. 301.*

(11) *When a Mahomedan widow is not on titled to claim—on her dower—See MAHOMEDAN LAW (DOWER), No. 1, 9 C.L.J. 541.*

(12) *Stipulation to pay—at a higher rate, when net a penalty—See CONTRACT ACT (IX OF 1872), No. 83, 10 C.W.N. 640.*

(13) *Cessation of—on a mortgage from the date of tender—See MORTGAGE (REDEMPTION), No. 6, 2 N.L.R. 62.*

(14) *Allowance of—at contract rate after the date fixed in the decree for redemption is not compulsory—See MORTGAGE (REDEMPTION), No. 9, 29 M. 170.*

(15) *Whether—allowable on demonstrative legacies under a will—See ACT V. OF 1881 (PROBATE), No. 17, 29 M. 155.*

(16) *Enjoyment of debtor's land in lieu of—is payment by him of—so as to save limitation—See LIMITATION ACT, No. 29, 16 M.L.J. 99.*

(17) *Payment of—as such, for purposes of the Limitation Act—Balance struck in Account Books—See LIMITATION ACT (XV OF 1877), No. 31, A.W.N. (1906), 212.*

Interest.—(Concluded).

(18) High rate of—*in what cases a penalty*—See CONTRACT ACT (IX of 1872), No. 84, 10 C. W.N. 1020.

(19) Payment of—as such, for purposes of giving a fresh start of limitation—See LIMITATION ACT (XV of 1877), No. 86, 9 O.C. 221.

(20) Whether the word 'Rent' in the Bengal Tenancy Act includes—See ACT VIII of 1885 (BENGAL TENANCY), No. 22, 11 C.W.N. 110.

(21) Mortgage—Covenant to pay interest "at 2 per cent" on redemption—Construction.

In a mortgage, the words "two per cent", in the clause relating to the payment of interest on redemption, mean *prima facie* two per cent *per mensem*. **Lekha Singh v. Champat Singh**, 28 A. 784 (P.C.).

LORD MACNAGHTEN, LORD ATKINSON, SIR ARTHUR WILSON, SIR ALFRED WILLIS.

(22) Payment into Court—Appropriation of such payment first for interest and then for principal—See PRACTICE (MIS. CASES), No. 2, A.W.N. (1905), 167.

See, also, I, 539-543: *Civ. Pro. Code*, Nos. 19 & 101; *Court Fees Act*, No. 13; *Decree*, No. 10; *Execution of Decree*, No. 60; *Mortgage (Redemption)*, No. 28; *Transfer of Property Act*, No. 18.

Interest (Penalty).

See I, *Mortgage (Redemption)*, No. 16.

Interlocutory orders.

See, I, *Misjoinder of Causes of Action*, No. 4 and *Punjab Courts Act*, 1884, No. 2.

Intermediate land-holder.

Whether—is tenant within the meaning of Act VIII of 1865 (Madras)—Superior land-holder, right of, to proceed under the above Act for arrears of rent due by—See RENT RECOVERY ACT (VIII of 1865, MADRAS), No. 4, 15 M.L.J. 861.

International Law.

See I, 543.

Interrogatories.

See, I, *Civil. Pro. Code*, No. 89.

Intoxicating drugs.

Contract to sell, contrary to public policy. See CONTRACT ACT, No. 12, 3 A.L.J. 802.

Inventions and Designs Act (V of 1888).

See ACT V of 1888 (INVENTIONS AND DESIGNS).

Irrigation.

Whether a riparian owner can use for, the water of a natural stream—See RIPARIAN PROPRIETORS, No. 1, 4 C.L.J. 370.

Jains.

• See I, *Hindu Law (Jains)*, No. 1.

Jalkar rights.

(1) —Non-tidal and non-navigable river—Gradual encroachment upon neighbouring estate—Right of fishery over portion encroached.

Where a non-tidal and non-navigable river which formerly flowed through A's estate, by gradual and imperceptible encroachment, came to submerge a portion of an adjoining estate owned by B.

Held—That A did not thereby acquire the right of fishery over that portion of the river which covered B's estate (a). **Narendra Chandra Lahiri v. Suresh Chandra Lahiri**, 10 C. W.N. 540=4 C.L.J. 51.

GHOSE and PARMITER, JJ.

References.—(a) L.R. 4 C.P.D. 438, *Expt.*, 13 M.L.A. 467, *relied on*.

(2) *Jalkas* or *Dobas* formed by a river shifting its course—Right of fishery therein—Decree, form of—

Plaintiffs were, by virtue of a settlement with the Government, entitled to exercise their rights of fishery in a certain navigable river wherever it flowed within the limits prescribed in the settlement. The river receded and shifted its course, on account of an earthquake, leaving lakes—*dobas* of sheets of water in the property of the defendant, a Zemindar, who took possession thereof and prevented the plaintiffs from enjoying their rights of fishery therein. Hence, the suits by the plaintiffs for recovery of *dobas* or lakes and for damages. It was found that some of these lakes or *dobas* had communication with the main channel of the river and that communication between them and the river had completely stopped.

Held, that, as regards the *dobas* or lakes communication between which and the main channel of the river had not stopped, the plaintiffs were entitled to recover possession and damages, irrespective of the question as to what might or might not be the rights of the parties when, at a future date, such communication might be completely stopped. *Held*, also, that as regards the *dobas*, communication between which and

Jalkar rights.—(Concluded).

river had been completely stopped, the plaintiffs were not entitled to possession thereof or rights of fishery therein, because such *dobas* could no longer be considered as a part of the river, but as private property belonging to the owner of the soil like the defendant in the present case, irrespective of the question as to what might or might not be the rights of the parties when, at a future date, communication might be restored (a).

With regard to the first mentioned *doba*, the lower Court had granted a decree to the plaintiff to the effect that they would be entitled to exercise their rights of fishery therein, so long as communication with river had continued throughout all seasons of the year. This portion of the decree was struck out by the High Court so far as that *doba* was concerned, **Bhaba Prasad v. Jagadindra, Nath Rai**, 38 C. 15.

GHOSH AND GEIDT, JJ.

References.—(a) W. R. (1864), 108; 21 W. R. 27 and 17 C. 963, 7.

(3) See **FISHERY**, No. 1, 33 C. 1349.

Jats.

See *I, Customs (Punjab)*, No. 7.

Joinder of causes of action.

Suit for rent of an agricultural holding and for amount agreed to be paid on account of a fishery—See **CIV. PRO. CODE**, No. 59, 33 C. 601.

Joinder of claims.

A plaintiff cannot give or take away jurisdiction by the addition of an unwarrantable claim—See **ACT X OF 1859 (BENGAL)**, No. 2, 3 C.L.J. 148.

See, also, *I, Civ. Pro. Code*, No. 55.

Joinder of parties.

(1) *Person jointly interested with plaintiff in subject-matter of suit, refusal by, to join as co-plaintiff, not necessary for impleading him as defendant.*

This suit was instituted for recovery of money due on a promissory note in favour of three persons, two only of whom figured as plaintiffs, the other person T having been impleaded as defendant. Held on second appeal that the lower Court ought not to have dismissed the suit on the ground that the said person T had been improperly made a defendant therein, because it had not been made out that he had refused

Joinder of parties.—(Continued).

to be made a plaintiff; since, for the impleading as defendant of a person jointly interested with the plaintiff, it is not incumbent on the latter to establish that that person has declined to join as co-plaintiff. **Peria Karuppan v. Yelayutham Chetti**, 29 M. 302.

WHITE, C.J. and SUBBHMANYA AIYER, J.

References.—26 C. 409 & 24 A. 226, F.

(2) Wrongly adding as defendant a person, against whom no decree could be passed—Dismissal of the person from the category of defendants—See **ACT VIII OF 1885 (BENGAL TENANCY)**, No. 37, 10 C.W.N. 216.

(3) Non-joinder of a prior mortgagee, whose rights are admitted by all the parties to the suit, whether the suit is liable to be dismissed on the ground of—See **TRANSFER OF PROPERTY ACT**, No. 71, 29 M. 84=16 M.L.J. 50.

(4) Suit by partnership for debt—Debt accrued due during life of a deceased partner—Necessity of representatives of the deceased partner as parties to suit for debt—See **CONTRACT ACT**, No. 20, 10 P.R. 1906.

(5) Suit by an auction-purchaser for the recovery of purchase-money from the decree-holder on the ground of judgment-debtor's want of title to the property sold—The judgment-debtor not a necessary party—See **CIV. PRO. CODE**, No. 183, 10 C.W.N. 274.

(6) Power of Court as regards—untrammelled by questions of limitation—See **LIMITATION ACT**, No. 34, 3 C.L.J. 576=10 C.W.N. 551.

(7) Suit for profits by one sharer against co-sharer who has mortgaged his share—Whether co-sharer and his mortgagee may be joined as defendants—See **CO-SHARERS**, No. 2, 9 O.C. 142.

(8) Power of appellate Court to add persons not respondents when appeal was presented as parties respondents to appeal—See **LIMITATION ACT**, No. 35, 33 C. 329.

(9) Suit by one of two undivided brothers entitled to recover a debt within the period of limitation—joinder of other brother after period of limitation, effect of—See **LIMITATION ACT**, No. 36, 79 P.R. 1906.

(10) Suit by sub-mortgagee for money due to him under the sub-mortgage—Point as to non-joinder of parties when to be taken—See **MORTGAGE (GENERAL)**, No. 10, 9 O.C. 238.

(11) Suit for redemption, who should be made parties to a—**Buddhist Law**—See **MORTGAGE (REDEMPTION)**, No. 16, 3 L.B.R. 169.

Joinder of parties.—(Concluded).

(12) Court adding a new defendant *proprio motu*—plea of limitation. See *Civ. Pro. Code*, No. 42, 8 Bom. L. R. 942.

(13) Suit for foreclosure—Portion of property exempted—Persons interested in property exempted not necessary parties—See *TRANSFER OF PROPERTY ACT (IV of 1882)*, No. 68, 2 A.L.J. 690 (F.B.).

(14) Suit by trustees on behalf of a temple—Persons interested in the temple as worshippers, impleading of, as parties to the suit—No misjoinder—See *HINDU LAW (RELIGIOUS ENDOWMENTS)*, No. 1, 15 M.L.J. 475.

See, also, *I, Civ. Pro. Code*, Nos. 52, 295; *Limitation Act*, Nos. 37, 39; *Mortgage (Extinction of Security)*, No. 1; *Right of Suit*, No. 22 and *Transfer of Property Act*, Nos. 45, 47.

Joint decree.

Satisfaction of—by one of the joint judgment-debtors—Suit for contribution, cognisability of, by a Small Cause Court—See *SMALL CAUSE COURTS PROVINCIAL ACT IX OF 1887*, No. 12, 3 A.L.J. 6.

See, also *I, Civil Pro. Code*, No. 112

Joint decree-holders.

Payments made to one of several—cannot operate as a discharge of the decree as against all of them—See *ACT V OF 1881 (PROBATE)*, No. 15, 3 A.L.J. 49.

Joint owners.

Competency of—governed by *Marmakata-yam Law* to divide their joint property by mutual consent, though no suit for compelling partition will lie—See *HINDU LAW (MARMAKATAYAM LAW)*, No. 1, 29 M. 62.

See, also, *I, 545.*

Joint possession.

(1) Though separate possession of any specific parcel of undivided property cannot be given without partition, a co-parcener is entitled to— with a purchaser from another co-parcener—See *HINDU LAW (JOINT FAMILY)*, No. 2, 8 Bom. L.R. 99.

(2) *Exclusive dealing with joint property by one of the co-owners—Remedy of the other co-owners—Form of decree.*

On the death of a tenant of land which belonged to several joint owners, one of the co owners obtained exclusive possession on the

Joint possession.—(Concluded).

tenant's holding and had his name recorded as owner in the mutation department. The other co-owners sued for joint possession to the extent of their interest in the land, and they asked also for interest *pendent lite* and futurer interest and costs of suit and for no further relief.

Held, that the decree to which the plaintiffs were entitled was a decree declaring that they and the defendant were joint owners of the land and that the plaintiffs were, as such joint owners, entitled to an account of the profits of the land. But the plaintiffs were not entitled to an injunction restraining the defendant from dealing with the land without the plaintiffs' consent. *Phani Singh v. Nawab Singh*, A.W.N. (1905), 238 = 28 A. 161.

STANLEY, C.J. and BURKITT, J.

Reference.—A. W. N. (1894), 127; A. W. N. (1894), 166; A. W. N. (1901), 48; 27 A. 88; A. W. N. (1905), 160 and 18 C. 10, *Refd. to*. A. W. N. (1905), 119, *in part overruled*.

See, also, *I, Joint owner*, No. 1.

Joint-property.

(1) *Co-shares in, excluded from possession, right of co-sharers to joint possession.*

Whenever new lands are formed by accretion to an old estate, it is not competent to any co-sharer of the estate, who appears first on the field, to grasp possession of the land and hold it either as his *kamat* or by settling tenants thereon to the permanent exclusion of the other co-sharers. *Held*, therefore, the seizure of possession on the part of the defendants, in this case, having amounted to an act of reprisal committed in defiance of the rights of the plaintiff, who was a co-sharer with them, the plaintiff was entitled to obtain joint possession with the defendants and not merely to get rents from the defendants leaving them in exclusive possession of the joint lands. *Surendra Narain Sinha v. Hari Mohan Misser*, 38 C. 1201.

BRETT & GUPTA, JJ.

References.—18 C. 10=L.R. 17 I.A. 110; 19 C. 253=L.R. 19 I.A. 48; 28 C. 223, *R. & D.*

See, also, *I, 545, 546.*

Joint tenancy.

Gift to two or more persons—See *CONSTRUCTION (OF DEEDS)*, No. 3, A. W. N. (1905), 170.

See, also, *I, Construction (of deeds)*, No. 12.

Joint tort-feasors.

- (1) *Cause of action—Guardian and minor—Appropriation of debt due to minor by third party.*

The defendants Nos. 1 to 8 owed a certain sum of money to the plaintiffs, who were minors. The defendant No. 9, who was a cousin of the plaintiffs, got the defendants Nos. 1 to 8 to wipe out the credit from the plaintiffs' account and to appropriate it to a personal debt due to them by the defendant No. 9 and his brother defendant No. 10. This was done without reference to the mother of the plaintiffs, who was their guardian. The plaintiffs sued the defendants Nos. 1 to 10 for recovery of their money. The Court dismissed the suit against defendants Nos. 1 to 8 and decreed it against the defendants Nos. 9 to 10. The plaintiffs appealed from the dismissal of their claim against the defendants Nos. 1 to 8 and the defendant No. 9 appealed for the claim to be dismissed against him.

Held, granting the appeal of the plaintiffs and rejecting that of the defendant No. 9, that all the defendants were liable. **Sewa Ram v. Kishen Ram**, 147 P.L.R. 1906. *

JOHNSTONE and HURRY, JJ.

Jota.

See I, Landlord and Tenant, No. 42.

Judge.

Power of—to make local inspection without notice to parties—*See LOCAL INSPECTION, No. 1, 88 C. 138.*

Judgment.

(1) Necessity for writing—in appeals dismissed under S. 551. C. P. Code—*See CIV. PRO. CODE, No. 288, 9 O. C. 32.*

(2) Suit to set aside a—obtained by fraud, right to maintain—*See RIGHT OF SUIT, No. 1, 16 M. L. J. 59.*

(3) Failure to pronounce—in open Court—Irregularity—*See CIV. PRO. CODE, No. 91, 8 Bom. L. R. 229.*

(4) Meaning of, in cl. (15), Letters Patent—*See LETTERS PATENT (CALCUTTA), No. 2, 39 C. 1323.*

(5) Whether order of Insolvency Court is a—of High Court—*See INSOLVENCY, No. 3, 9 C. W. N. 952.*

See also, I, 547, 548; Civ. Pro. Code, No. 300 b; Letters Patent (Calcutta), No. 1; Mortgage (Construction), No. 1; Small Cause Suit, No. 2.

Judicial Inquiry.

- (1) *Inquiry by District Magistrate into a crime alleged to be about to be committed—Inquiry, even if official, certainly not judicial—Result and value of the inquiry—Statement by a boy, value of.*

When the Magistrate of a District received information which he apparently believed and which, if true, showed that a grave crime was being or was about to be committed, which, if successful, would result in a great wrong in respect to properties in his district, and when the said Magistrate caused some enquiries to be made and took such steps as seemed to him necessary, in the emergency for the prevention of the crime.

Held, that those enquiries, if they could be called official in any sense, were certainly not judicial. The enquiries were secret, no notice was given to any body on behalf of the person principally interested, and there was nobody to check the mode in which the alleged statements were elicited, nobody to test the statements by cross-examination, nobody to watch the accuracy with which they were recorded, and consequently no weight can properly be given to the proceedings at or the results of such enquiries.

When reliance is sought to be placed upon an alleged statement made by a boy, it must be proved that the language used was his own and not put in his mouth by the person conducting the examination, as nothing could be easier than to extract by the latter process almost any statement from a frightened child, who suddenly finds himself alone in the custody of strangers and some of them, officials. **Chandrasang Himatsang v. Mohansang Hamirsang**, 4 C.L.J. 181=8 Bom. L. R. 705 (P.C.)=80 B. 523=1 M.L.T. 301.

LORD MACNAUGHTEN, SIR ANDREW SCORLE, SIR ARTHUR WILSON and SIR ALFRED WILLS.

References.—22 W.R. 281, 7 I.A. 63, 25 C. 90, 23 C. 366, 18 A. 478 and 23 M. 499, R.

Judicial Officers.

Privileges of—Act done in discharge of duty, —Acts done within the limits of jurisdiction—Jurisdiction, meaning of—*See ACT XVIII OF 1850 (PROTECTION OF JUDICIAL OFFICERS), No. 1, 7 Bom. L.R. 951.*

Judicial Officers Protection Act.

See ACT XVIII OF 1850.

Judicial order.

Order dismissing for default a petition of objection under S. 104 of the Bengal Tenancy Act is not a—See ACT VIII of 1885 (BENGAL TENANCY), No. 39, 3 C.L.J. 133.

Judicial Proceeding.

See *I, Slander of Title*, No. 1.

Jurisdiction.**1.—GENERAL.****2.—OF CIVIL COURTS.****3.—OF CIVIL AND REVENUE COURTS.****4.—OF HIGH COURTS.****5.—OF JUDICIAL COMMISSIONERS.****6.—OF REVENUE COURTS.****7.—OF SETTLEMENT OFFICER.****8.—OF SMALL CAUSE COURTS.****1.—(General).****(1)—of Court—Exercise of discretion.**

When a Court, upon an erroneous view of the scope of a section of the Civil Pro. Code, applies it to a case to which it has no application, it acts without jurisdiction (*a*). **Braja Bala Debi v. Gurudas Mandal**, 3 C.L.J. 293= 38 C. 467.

RAMPINI and MOOKERJEE, JJ.

References.—(*a*) 7 B. 341, 6 M.I.A. 134 (155) and 22 C. 767, *Refd. to*.

(2) **Appeal—Value of suit for purposes of jurisdiction—Execution of decree—Attachment—Objection against—Declaratory suit for release of property from attachment—Civ. Pro. Code (Act XIV of 1883), Ss. 278, 282—Suits Valuation Act (VII of 1887), S. 11.**

In a suit for release of property from attachment, made in execution of a decree, where the decretal amount is less than the value of the property, the jurisdiction of Court depends on the decretal amount and not on the value of the property (*a*). The fact that, in the plaint, the value of the property is entered as the value of the suit for purposes of jurisdiction does not affect the question of jurisdiction.

When, undervaluation of an appeal has not prejudicially affected the disposal of the appeal—S. 11 of the Suits Valuation Act bars any objection raised on the ground that the appellate Court had no jurisdiction to hear the appeal. **Bishnu v. Dal Singh**, 71 P.L.R. 1906=55 P.R. 1906.

LAL CHAND, J.

Reference.—(*a*) 11 A. 799, *F*.

Jurisdiction.—(Continued).**1.—(General).—(Continued).**

(3)—of appellate Court to stay proceedings in the lower Court in pursuance of its order pending the appeal from such order—See ACT VIII of 1890 (GUARDIAN AND WARDS), No. 1, 3 C. L.J. 29.

(4) *Ex parte* decree obtained without service of summons—Proof on record that, subsequently, non-service was assented to—Such assent fraudulent—Court's power to investigate the subsequent fraud—See CIV. PRO. CODE, No. 77, 3 C.L.J. 160.

(5)—of appellate Court setting aside *Ex parte* decrees or order to order restitution of property taken in execution of the decree or order set aside—See CIV. PRO. CODE, No. 4, 3 C.L.J. 181.

(6) Leave of the Court obtained under Letters Patent, cl. 12—Suit as originally framed held rightly received by Court irrespective of the leave—Jurisdiction of the Court to entertain suit—See LETTERS PATENT (BOMBAY), No. 1, 3 Bom. L.R. 56.

(7)—of Court to file an award in, depends on the value of the entire matter submitted—See ARBITRATION, No. 1, 29 M. 44.

(8) Appeal against an order of a Court inferior to a District Court, under S. 588 (cl. 17), Civ. Pro. Code, to which Court lies—See CIV. PRO. CODE, No. 818, 2 N.L.R. 54.

(9) Valuation for purposes of—of suit for settlement of accounts—See COURT FEES ACT (VII of 1870), No. 6, 46 P.R. 1906.

(10) Suit for restitution of conjugal rights—Valuation of relief sought by plaintiff determining—See ACT VII of 1887 (SUITS VALUATION) No. 3, 3 A.L.J. 266.

(11) Power of Court to determine, on an application under S. 525, Civ. Pro. Code, whether parties referred matter to arbitration—See CIV. PRO. CODE, No. 268, A.W.N. (1906), 186.

(12)—to entertain suit to set aside order awarding costs of a Magistrate trying a petition to set aside a Municipal election See ACT I of 1900 (N.W.P. and OUDH MUNICIPALITIES), No. 2, A.W.N. (1906), 97.

(13) Loss of jewellery sent through Post—Place of suing—performance of contract—See CIV. PRO. CODE, No. 28, 70 P.R. 1906.

(14)—of a District Judge to withdraw an appeal from a Subordinate Judge to whom it

Jurisdiction.—(Continued).**——1.—(General).—(Continued).**

had been transferred and transfer it to an Additional District Judge—See *APPEAL, (GENERAL)*, No. 6, 10 C.W.N. 841.

(15) First Class Subordinate Judge—Lands valuing below Rs. 5,000 situated outside his ordinary—but within his special—See *CIV. PRO. CODE*, No. 26, 8 Bom. L.R. 516.

(16) Suit when defendant resides out of—Leave of Court may be obtained after institution of suit—See *CIV. PRO. CODE*, No. 27, 8 Bom. L. R. 548.

(17) Suit for specific performance of agreement of grant a putni lease and for possession of land—See *ACT VI OF 1876 (BENGAL)*, No. 2, 4 C.L.J. 288.

(18)—of Court to take proceedings under S. 45 of *ACT VIII OF 1890*, when one of the minors, for whom a guardian has been appointed, has attained majority—*ACT VIII OF 1890 (GUARDIAN AND WAIDS)*, No. 19, 16 M.L.J. 286.

(19)—of District Judge to transfer case withdrawn by him from a Subordinate Court to his own file—See *ACT XII OF 1887 (BENGAL CIVIL COURTS)*, No. 5, 10 C.W.N. 902.

(20) Whether sale officer has, to sell in execution of decree in contravention of order staying of execution—See *Pre-emption*, No. 43, 9 O. C. 289.

(21) Courts of law have no, to compel employment of a particular person as priest—See *Adoption*, No. 1, 11 C. W. N. 147.

(22) Exchange of occupancy rights—Suit by tenant for declaration that he is occupancy tenant by exchange.—See *ACT XVI OF 1887 (PUNJAB TENANCY)*, No. 12, 139 P. R. 1906.

(23) Suit by purchaser of the right to recover arrears of rent against both land-holder-(vendor and tenant). See *LANDLORD AND TENANT*, No. 15, A.W.N. (1906), 304.

(24) Suit to establish right to attached property—See *VALUATION OF SUIT*, No. 1, 142 P.R. 1906.

(25) Possessory suit to which Collector is a party.—Jurisdiction of Mamlatdar to entertain suit.—See *ACT III OF 1875 (BOMBAY MAMLATDARS COURTS)*, No. 2, 8 Bom. L. R. 904.

(26)—for purposes of value, in a suit for partition, is the value of the entire estate sought to be partitioned—See *ACT VII OF 1887 (SUITS VALUATION)*, No. 5, 4 C.L.J. 509.

Jurisdiction.—(Continued).**——1.—(General).—(Continued).**

(27) Want of, for a Court to review its own decree, after dismissal of appeal therefrom—See *CIV. PRO. CODE*, No. 290, 4 C. L. J. 506.

(28) Transfer of local—to another Court—application for execution to what Court to be made—See *EXECUTION OF DECREE*, No. 16, 9 O. C. 281.

(29) Court having, in suits for wrong to movables—See *CIV. PRO. CODE*, No. 32, 3 L. B.R. 164.

(30)—of execution Court to question validity of decree—See *ACT VII OF 1899 (SUCCESSION CERTIFICATE)*, No. 1, a, 145 P.L.R. 1906.

——2.—(of Civil Courts).

(1) *Suit on pro-note—Defendant resident of a protected Native State—Place of performance—British Indian territory—Civ. Pro. Code, S. 17.*

Suit on a pro-note, executed in a protected Native State in the Madras Presidency, the executant himself having his domicile there. The suit was instituted in a British Indian Court, within whose jurisdiction the cause of action arose (*i.e.*), at a place where the contract had to be performed. *Held*, the British Indian Court had jurisdiction, the cause of action having arisen within its limits (*a*). In the case of contract, the cause of action arises at the place of performance even apart from the provisions of S. 17 of the *Civ. Pro. Code*. *Tadepalli Subba Rao v. Nawab Sayed Mir Gulam Ali Khan of Banganapalli*, 29 M. 69.

SUBRAHMANYA AYYAR, OFFG. C.J. and
SANKARAN NAIK J.

Reference.—(a) 26 M. 544, F.

(2) A suit to set aside a sale in execution of a certificate under the Public Demands Recovery Act [I of 1895 (B.C.)] is maintainable in the Civil Court and S. 312 of the Code of Civil Procedure is no bar to such suit (*a*). *Girish Chandra Chongdar v. Golam Kaem*, 3 C.L.J. 235 = 10 C.W.N. 847 = 38 C. 451.

MACLEAN, C.J. and GEHRT, J.

Reference.—29 C. 73, F.

(3) *Suits filed on the original side of a Munsiff's Court—District Court subsequently acquiring small cause jurisdiction, effect of.*
Suits of a small cause nature, which at the time of their institution, were rightly filed as

Jurisdiction.—(Continued).

—2.—(of Civil Courts).—(Continued).

original suits in a Munsiff's Court ought to be tried and disposed of as such notwithstanding the fact that the Dt. Court subsequently acquired small cause jurisdiction over the area in which the causes of action for the suits arose—**Kannan Nambiyar v. Anantan Nambiyar**, 15 M. L. J. 491=29 M. 124.

DAVIES and BODDAM, JJ.

Reference.—26 M. 212, R. and F.

(4)—of Court to which a decree has been transferred for execution, to entertain suit based on the validity of the decree.

The rule, that suits, for determination of rights to, and interest in, lands, should be brought in the Court within whose jurisdiction the lands lie, cannot by any means be construed as giving jurisdiction to the executing Court to entertain a suit for setting aside an attachment of lands effected in execution of a decree of another Court, which has transmitted the same for execution by the former Court, on the ground that the decree itself was null and void, because, the non-liability of the lands from attachment under the decree of the other Court is wholly dependent on the alleged invalidity of the decree and so long as the decree continues valid (which it does till set aside by the Court which passed it), the attachment itself continues perfectly valid. **Yelayudhan Nilakantan v. Krishnan Padmanabhan**, 21 T.L.R. 138.

SADASIYA AIYAR, C.J., and RAMACHANDRA ROW, J.

Reference.—18 T.L.R. 14, F.

(5)—of Civil Courts, in suits by Government for possession of State-lands under Burma Act IV of 1898—See LOWER BURMA TOWN and VILLAGE LAND ACT, No. 1, 8 L.B.R. 165.

(6) Suit by hereditary Village Karnam of a proprietary village falling within Madras Act III of 1895 for recovery of land attached to office—Denial by defendant of fact of land being attached to office—Decision of question of title—See ACT III OF 1895 (MADRAS), No. 2, 1 M.L.T. 102.

(7)—of a Judge to set aside on order which he would not have passed had he been informed of the true state of affairs—See CIV. PRO. CODE, No. 191, 3 A.L.J. 458.

(8) The express provisions of the C.P. Code are not exhaustive as to matters of procedure

Jurisdiction.—(Continued).

—2.—(of Civil Courts).—(Continued).

and in cases where no specific rule exists, Courts have jurisdiction to act according to equity, justice and good conscience—See CIV. PRO. CODE, No. 285, 3 C.L.J. 67.

(9)—in suit for possession as under-proprietor or by one who has been ejected as ordinary tenant—See ACT XXII OF 1886 (ODDH RENT) No. 1, 9 O.C. 37 (B.)

(10)—to decree possession of land allotted in partition by a Revenue Court, when no possession or formal possession delivered by Revenue Court—See ACT XVII OF 1876 (ODDH), No. 2, 9 O.C. 76 (B.)

(11)—to entertain suits brought, by parties to an application for partition before an Assistant Collector, for declaration of their rights—See ACT XIX OF 1873 (N.W.P.), No. 2, 3 A.L.J. 43.

(12)—to pass a simple money-decree after removal of the conditional sale clause on reference to Collector—See ACT II OF 1903 (PUNJAB), No. 1, A.W.N. (1906), 14.

(13)—of ordinary Civil Courts to entertain suit by share holders of a Company for a declaration of their right to vote at meetings of the Company—See ACT VI OF 1882 (COMPANIES), No. 3, 10 C.W.N. 906.

(14) Suit by a mortgagor against a mortgagee's lessee, after redemption of mortgage—See TRANSFER OF PROPERTY ACT, No. 94, 3 A.L.J. 517.

(15) Suit for declaration that plaintiff is entitled to get from his co-sharer the amount due from him on account of arrears of revenue, whether maintainable in a Civil Court—See ACT XXII OF 1886 (ODDH RENT), No. 2, 9 O.C. 232.

(16) A suit to recover a *twinyo* or *ayo*, whether a Civil Court can entertain—See UPPER BURMA LAND and REVENUE REGULATION, No. 1, U. B. R. Land and Revenue Regulation. 1.

(17) Acquiescence of defendant in the institution of a suit in a Civil Court—See CIV. PRO. CODE, No. 31, 7 BOM. L. R. 289.

(18)—of District Judge, in a suit under S. 539, Civil Procedure Code, to direct the present trustee to hand over trust-properties to the new trustee or trustees appointed by the Court under its decree—See CIVIL PROCEDURE CODE, No. 276, 2 A.L.J. 591.

Jurisdiction.—(Continued).**2.—(of Civil Courts).—(Concluded).**

(19)—of Court—Consent of parties to have evidence taken in a particular way does not give to Court—See PRACTICE (MIS. CASES), No. 8, 7 Bom. I.R. 642.

(20)—to call in question the exercise of discretion by a Sub-Registrar or Registrar under S. 21 or S. 24 of the Registration Act, in a suit under S. 77 of the Act—See REGISTRATION ACT (III of 1877), No. 11 7 Bom. L.R. 742.

(21)—of District Judge to entertain a suit for the recovery of trust-property improperly alienated—See CIVIL. PRO. CODE, No. 276, 2 A.L.J. 501.

See, also, I, 548-557; Act IV of 1889 (Divorce), No. 1; Act VII of 1889 (Succession Certificate), No. 4; Act I of 1900 (N.W.P.), No. 2; Act II of 1901 (N.W.P.), Nos. 2, 11 & 16; Act III of 1901 (N.W.P.), No. 3; Act XII of 1886 (Oudh), No. 3; Act XVIII of 1876 (Oudh lands), No. 4; Act X of 1876 (Bombay), No. 1; Act XX of 1891 (Punjab-Municipal), No. 2; Chaulidars Charkan lands, No. 2; Civil Pro. Code, Nos. 8, 34, 35, 37, 114, 145, 272, 275, 279, 318, and 399, Contract Act, No. 17; Court Fees Act, No. 3; Fraud, No. 11, Kumaon Rules, 1894, No. 1; Land Lord and Tenant, Nos. 1 & 2, 54; Lower Burma Town and Village Land Act, No. 1; Penal Code, No. 1-a Regulation I of 1886, No. 1; Transfer of Property Act, No. 18 and Valuation of Suit, No. 2.

3.—(of Civil and Revenue Courts).

(1)—Suit for possession of a grove—Defendant, zamindar—Civil Court incompetent to entertain suit—sale of grove by tenant.

A case in which a tenant calling himself a grove-holder seeks to obtain possession of a tenancy against his landlord, is a case over which Civil Courts have no jurisdiction.

The original tenant was ejected in 1808, the grove was sold and purchased by one Medai who, together with the original tenant, sold it to Bulagui Das, who brought the present suit for possession. Held that the original tenant

Jurisdiction.—(Continued).**3.—(of Civil and Revenue Courts).—(Continued).**

and Medai had no right to sell and Bulagui Das, purchased nothing. *Wahida Khatun v. Bulagui Das*, 8 A.L.J. 385 = A.W.N. (1906), 140. STANLEY, C.J. and KNOX, J.

Reference.—21 A. 297, R.

(2) As to determination of right to maintenance-allowance—Maintenance holder, claim for arrears of rent against—Rules of the British Indian Association of Oudh as to payment of rent by maintenance holder.

The plaintiff, a Talukdar, sued the defendant for arrears of rent for a village. The defendant held the village as a maintenance holder and the rent payable by him depended upon the interpretation of the following rule framed by the British Indian Association of Oudh :—

"1st—Persons whose land was always included in the Taluqa and who never got separate kabuliats :—This class will remain in possession of what they actually had at annexation, rent-free during their lives, but subject to payment in second generation of 25 per cent., to the Taluqdar, in the third 50 per cent., and will not have transferable rights. Such persons must pay the Government revenue plus 10 per cent., to the Taluqdar and they will have heritable rights."

Held, that according to the above rule the plaintiff was entitled to half the Government revenue in the second generation and in the third generation to the amount of the Government revenue plus 10 per cent.

Held, further, that the rental for the purposes of these rules must be taken to be twice the Government revenue and not the gross rental calculated according to the *jamabandis* of every year.

The plaintiff also claimed a certain sum which, he alleged, had been wrongly deducted by the Court of Wards on account of the defendant's maintenance, while the defendant contended that the *gusara* allowance for certain years included in the plaintiff's claim should be set off.

Held, that it was not within the province of a Rent Court to determine whether the maintenance was or was not payable, or to set off the *gusara* allowance against the amount to the

Jurisdiction.—(Continued).**2.—(of Civil and Revenue Courts).—(Continued).**

plaintiff. *Thakur Mohamed Nawab Ali Khan v. Wahid Ali*, 9 O.C. 179 (B).

SCOTT and WELLS, J. CS.

(3) Landlord and Tenant—Suit on bond for arrears of rent.

A suit for recovery of money due on a bond, the consideration for which is arrears of rent, is cognizable by Civil Court and not by Revenue Court. *Gopal Bahal v. Jassa*, 99 P.L.R. 1906.

CHATTERJI, J.

(4) A Revenue Court is the only Court of competent jurisdiction for a suit for abatement of rent. A plaintiff (*putnidar*) cannot, in the first instance, sue in a Civil Court for a declaration that he is entitled to an annual abatement of rent—See ACT X OF 1859 (BENGAL), No. 2, 3 C. L.J. 148.

(5) A suit for adjustment of rent on the ground that the rent payable under a lease is less than the sum nominally inserted in it is not a suit for statement and is, consequently, maintainable in a Civil Court—See ACT X OF 1859 (BENGAL), No. 2, 3 C.L.J. 14.

(6) A plaintiff cannot give away or take away—by the addition of an unwarrantable claim—See ACT X OF 1859 (BENGAL), No. 2, 3 O.L.J. 148.

(7) Claim to recover possession of holding by tenant—Variety of relief no ground for institution of suit in Civil Court—See ACT II OF 1901 (N. W. P.), No. 14, 8 A.L.J. 226.

(8)—of Mamlatdar to grant injunction in case of obstruction to use of roads or customary ways to fields—See ACT III OF 1876 (BOMBAY MAMLATDARS), No. 4, 8 Bom. L.R. 812.

(9) Suit to recover money paid to release property from unlawful attachment, maintainability of, in a Civil Court—See CONTRACT ACT, No. 27, A.W.N. (1906), 114.

(10) The question of the measure of right is a question of title and a suit involving the measure of right is cognizable by a Civil Court—See ACT XVII OF 1887 (PUNJAB LAND REVENUE), No. 3, 46 P.L.R. 1906.

(11) —of Civil and Revenue Courts—Suit to recover land alleged to be the emolument of plaintiff's office of *karnam*—Defendant's denial of plaintiff's claim—See ACT III OF 1876 (MADRAS), No. 1, 1 M.L.T. 381.

Jurisdiction.—(Continued).**3.—(of Civil and Revenue Courts).—(Concluded).**

See, also, I, ACT XXII OF 1866 (*Oudh Rent*), Nos. 1 and 4; ACT XVI OF 1887 (*Punjab Tenancy*), Nos. 6, 8 and 10; ACT XVII OF 1887 (*Punjab*), No. 3; *Jurisdiction (of Civil Courts)*, No. 26.

4.—(of High Courts).

(1)—to examine in second appeal the evidence as to "Usages having the force of law"—See CIV. PRO. CODE, No. 812, 29 M. 24 = 16 M.L. J. 8.

(2) It is competent for a single Judge of a High Court to reject an application for admission of a second appeal—See CIVIL PRO. CODE, No. 64, A.W.N. (1906), 68.

(3) Commission Agent—Place of payment of debt—See LETTERS PATENT (BOMBAY), No. 2, 30 B. 167.

(4) Administration-suit—Fraudulent decrees and deeds, setting aside of—See ADMINISTRATION SUIT, No. 1, 2 C.L.J. 189 (P.C.)

(5)—of Calcutta—Infringement of copyright—See ACT XX OF 1847 (IMPERIAL), No. 1, 2 C. L.J. 511.

(6) High Court's, to stay proceedings in Small Causes Court—Reference to arbitration—See ACT IX OF 1899 (ARBITRATION), No. 3, 8 Bom. L. R. 955.

See, also, I, 557, 555; ACT XX OF 1847 (*Imperial*), No. 1; CIV. PRO. CODE, Nos. 42, 304, 398; (*Guardians and Wards Act (VIII of 1890)*, No. 1; *Letters Patent (Bombay)*, No. 3; *Res. Judiciala*, No. 3; *Solicitor's Lien*, No. 1.

5.—(of Judicial Commissioners).

—of the Judicial Commissioner, Central Provinces, under ACT XIX OF 1841—See ACT XIX OF 1841 (IMPERIAL), No. 2, 2 N.L.R. 72.

6.—(of Revenue Courts).

(1) Appeal against order under S. 98, ACT XVI OF 1887 (*Punjab Tenancy*)—Power of Commissioner to decide suits on merits—See ACT XVI OF 1887 (*PUNJAB TENANCY*), No. 17, 2 P.R. 1906 (Rev.)

(2) Suit for mesne profits by mortgagee entitled to possession is a suit by a co-sharer within S. 77 (3) (k) of the Punjab Tenancy

Jurisdiction.—(Concluded).**—3.—of Revenue Courts.—(Concluded).**

Act—Cognisable by a Revenue Court—See ACT XVI OF 1887 (PUNJAB), No. 18, 9 P. R. 1905 (Rev.)

(3) Suit to recover money advanced to mortgagor for land revenue, whether cognizable by Revenue Court—See ACT XVI OF 1887 (PUNJAB TENANCY), No. 11, 126 P. R. 1906.

(4) Whether a Settlement Officer has—to act under verbal instructions from a superior settlement Court—See ACT XVI OF 1865 (N.W.P.), No. 1, 9 O.C. 301.

See, also, I, Act XXII of 1866 (*Oudh Rent*), Nos. 1 and 4; Act XVI of 1887 (*Punjab Tenancy*), Nos. 6, 8 and 10; Act XVII of 1887 (*Punjab*), No. 3; *Jurisdiction (of Civil Courts)*, No. 26.

—7.—(of Settlement Officer).

See, I, Act VIII of 1885 (*Bengal Tenancy*), No. 28.

—8.—(of Small Cause Courts).

(1)—of small Cause Court—Suit for balance under accounts—Prayer in the suit, for dissolution of partnership treated as mere surplusage—See SMALL CAUSE COURTS PROVINCIAL, ACT (IX OF 1887), No. 6, 3 A.L.J. 23.

(2) The power of a Presidency S. C. Ct., under S. 88 of Act XV of 1882, is not similar to the power of the High Court under S. 622, CIV. PRO. CODE—See ACT XV OF 1882 (PRESIDENCY SMALL CAUSE COURTS), No. 2, 8 Bom. L.R. 678.

(3) Exercise of powers under S. 28 of Act IX of 1887 gives—to Court to try suits as an original suit—See SMALL CAUSE COURTS ACT PROVINCIAL (ACT IX OF 1887), No. 3, 29 M. 329.

(4) Suit for recovery of rent of less than Rs. 500 and for declaration—See CIV. PRO. CODE, No. 314, 16 M.L.J. 432.

(5) A Provincial Small Cause Court, whether, has—to entertain suit for compensation for diversion of watercourse—See SMALL CAUSE COURTS PROVINCIAL, (ACT IX OF 1887) No. 10, 184 P.R. 1906.

See, also, I, Civ. Pro. Code. Nos. 179 & 333.

Justi tertii.

See I, *Landlord and Tenant*, No. 53.

Justice, Equity and good Conscience.

—See *Pre-emption*, No. 4.

Kabuliat.

—not to be regarded the equivalent of a lease—See TRANSFER OF PROPERTY ACT, No. 111, 9 O.C. 296.

See, also, I, *Landlord and Tenant*, Nos. 14 and 15 and *Rent*, No. 1.

Karnayan.

Right of, to resume possession of property, allotted for the maintenance of junior members of Tarwad—See MARUMAKKATTAYAM LAW (MAINTENANCE), No. 1, 21 T.L.R. 159.

Karnayan and Anadrayan.

See I, *Malabar Law*, No. 1.

Kathiawar State.

—whether British territory—Relation of British India with Native States, how ascertained—Exercise of Sovereign Powers of the Governor of Bombay in Council through Political Agent—See SOVEREIGN POWERS, No. 1, 10 C.W.N. 361.

Khata.

—signed by the son of the obligee—Promissory note—See CONTRACT ACT, No. 14, 8 Bom. L.R. 644.

Khata Books.

See I, *Evidence Act*, No. 9.

Khoja Mahomedans.

See I, 560.

Khorposh Grant.

(1) *Landlord and tenant—Jungleburi lease—Construction.*

On the 22nd of April, 1824, the then Rajah of Jheriah executed a 'jungleburi lease' to one Golok Mudi, the material parts of which were:—"In Mouze Tisra..there are jungle lands..the lands.. are now settled with you at a rental of Rs. 12. "You shall cut the jungle.. and prepare the lands. When the lands are prepared, rents will be assessed in the presence of five persons....On these conditions the lands within these boundaries with the jungle....are given to you for jote and cultivation...." By 1835 or 1836 Golok Mudi had cleared the jungle and brought the land cleared into cultivation; and the Mouzah had become separated from Tisra and named Golokdihi. A new agreement was, therefore, entered into; its material portions were:—"You have been holding possession of Mouzah Golokdihi...as jungleburi chuck.. You have now cleared the jungle within these

Whorposh Grant.—(Concluded).

boundaries in Mouzah Golokdih. Rs. 47-15-0 are fixed as the rent." On a construction of the two instruments, *held*, (1) that the leases to Golok Mudi included the whole area of Golokdih and (2) that the leases related to the surface and did not carry the subjacent minerals. **Tituram Mukerjee v. Cohen**, 2 C.L.J. 408=9 C.W.N. 1078=15 M.L.J. 879=7 Bom. L.R. 930 (P.C.)=8 A.L.J. 59=38 C. 203=32 I.A. 185.

LORD DAVY, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

See, also, I, 561; and *Mines*, No. 2.

Khoti Act.

See ACT I OF 1880 (BOMBAY).

Khudkasht.

See I, Act II of 1901 (N.W.P. Tenancy), No. 11.

Kritrima son.

The relation of a—i.e., "of a son bought" cannot now be validly created under Hindu Law—*See* HINDU LAW (ADOPTION), No. 1, 16 M.L.J. 22.

Kumaon Rules, 1894.

See, I, 562.

Kutchi Memons.

(1) *Succession among, governed by the rules of inheritance under Hindu Law—Power of son to administer father's estate and to pay debts.*

Plaintiff H.S., a Memon merchant of Bombay and creditor of one J.M, the deceased father of defendants 1 and 2, filed this suit alleging that, immediately after the death of J.M., the defendants took possession of his goods and proceeded to distribute it among the various creditors, not rateably, but in any way they liked, that this amounted to tort on their part, that they had rendered themselves liable as executors *de son tort* and that the said goods should be brought back and distributed among all the creditors rateably. *Held*, the deceased being a Kutchi Memon, his family was governed by the rules of inheritance under the Hindu Law and his sons, the defendants, 1 and 2, were therefore entitled to administer their father's estate and to pay up his debts to some of his creditors irrespective of its effect upon the others (a) and that defendants 6 and 7, who had received some of the goods in question in satisfaction of their claim, were entitled to

Kutchi Memons.—(Concluded).

retain those goods without being obliged to bring them into hotch-pot and share the same rateably with the other creditors. **Haji Saboo v. Ally Mohamed**, 80 B. 270.

TYABJI, J.

Reference.—(a) 26 M. 792, F.

Laches.

(1)—on the part of a person having for a long time lain by without objecting to the terms of a deed disables him from denying the rights created thereby in favour of other persons—*See* HINDU LAW (TRUSTS), No 1, 29 M. I.

(2)—how far affects a suit for specific performance—*See* SPECIFIC PERFORMANCE, No. 2, 33 C. 633.

See, also, I, 562-563; *Administration*, No. 2.

Lakhiraj land.

In a suit for possession of land by a landlord, the onus is on him to show that the land is *mal* and not of the defendant—*See* LANDLORD and TENANT, No. 2, 10 C.W.N. 434.

Lakhiraj Title.

See I, Act III of 1898 (Bengal), No. 1.

Lambardar.

(1) *Powers of—to grant long leases.*

A lambardar is competent to execute a lease of land for 10 years, without reference to other co-sharers, where the land would not otherwise be let and where it is for the benefit of co-sharers that the land be so let. **Mukta Prasad v. Kamta Singh**, 3 A. L. J. 655=A.W.N. (1906), 277.

STRACHEY, C. J., and BANERJI, J.

References.—S.A. 123 of 1898, decided on 14th June, 1900, F., and A.W.N. (1897), 207, D.

(2) *Power of—to grant leases for long terms*—*See* LEASE, No. 3, 8 A. L. J. 639.

See, also, I, 564; Act XVII of 1887 (Punjab Land Revenue), No. 4; *Jurisdiction (of Civil Courts)*, No. 31.

Lambardar and Co-sharer.

(1) *Occupancy tenant executing a lease in favor of co-sharer—death of tenant without heirs—right to possession.*

Where an occupancy tenant executed a *zar-i-peshgi* lease in favour of one of the co-sharers and died without leaving any heir, *held*, that the co-sharer in possession could not be ousted by the lambardar inasmuch as he, in his posi-

Lambardar and Co-sharer.—(Concluded).

tion as co-sharer, was entitled to possession of the land in suit. *Shib Narain Lal v. Maulvi Muhammad Abdul Rafi Khan*, 8 A.L.J. 669 = A.W.N. (1906), 290.

STANLEY, C.J., and KNOX, J.

See, also, *I, Registration Act (III of 1877)*, No. 6.

Land Acquisition Act.

See under ACT I OF 1894.

Landlord.

A suit on bond undertaking to pay debt due from—not a suit for rent—See *SMALL CAUSE COURTS PROVINCIAL ACT (IX OF 1887)*, No. 4, 4 C. L.J. 402.

Landlord and Tenant.

- (1) *Denial of title—Forfeiture—Decree of Court—Bengal Tenancy Act (VIII of 1885)*, *ss. 25, 178.*

Where the denial by tenant of his landlord's title is followed by a decree of Court affirming such denial, such denial operates as a forfeiture and the landlord is entitled to *khas* possession of the land by ejectment of the tenant. *Ramgati Mohurer v. Pran Hari Seal*, 3 C.L.J. 201.

GHOSE and PARJITER, JJ.

References.—(a) 2 C.W.N. 755 and 6 C.W.N. 575, *F*; 17 C. 196 and 2 C.L.J. 399, *Distd.*

- (2) *Lakhiraj or mal—Onus—Pasture land.*

When a landlord sues for possession of land lying within the ambit of his estate on the ground that it is *mal* and not *lakhiraj* of the defendant, the burden of proof in the first instance is upon the plaintiff.

The reason of the rule, as regards the burden of proof, is mainly that where possession of a long time by a defendant is admitted to be undisturbed, the plaintiff must give affirmative proof of the land being part of his decennially settled estate.

The fact of the land being pasture land raises a presumption in favour of the plaintiff. *Shank Milan v. Mahomed Ali*, 10 C.W.N. 434.

MITRA J.

References.—(a) 8 B.L.R. 566, *F*. (b) 20 W.R. 295, *relied on.*

- (3) *Joint lessors, who are tenant-in-common*
(4) *Liability of lessees—Applicability of the principle in Transfer of Property Act (IV of 1882)*, *ss. 37 and 109.*

Landlord and Tenant.—(Concluded.)

Where there is a relation created by contract with several joint landlords, according to the English cases, that relation subsists, only, so long as all of them wish it to continue, while, according to the Indian cases, it subsists until all of them agree to put an end to it; and it is not competent to any one of them to determine a contract, which is entire, unless there are any special circumstances in the case, like collusion between a tenant and one of the lessors, *etc.* But this principle will not apply when the suit is for ejectment and partition and all the co-owners are made parties, and a tenant-in-common may have ejectment to the extent of his interest on proper notice to quit. The rule of decision, contained in *ss. 37 and 109* of the Transfer of Property Act, though they have not been declared applicable, ought to be followed in such cases. In the case of joint lessors, the rent payable and the property to be surrendered by the lessee to one of them, except when all the parties agree, can be only ascertained in a suit to which all the lessors and the lessees are parties as in the case of apportionment of rent referred to in *S. 109*, Transfer of Property Act. *Ari Raja Simhadri Appa Rao v. Prattipati Ramayya*, 29 M. 29.

SUBRAHMANYA AYYAB, OFFG. C.J. and SANKARAN NAIR, J.

References.—1 M. 883, *D.*, 13 C. 75 at p. 77, 5 M. 229 at p. 230, 14 M. 490, 24 M. 296, *R.*

- (4) *Rent—Certain co-sharers in a Zemindari purchased certain holdings therein—Suit by a co-sharer-purchaser against other co-sharer-purchasers for rent of holdings occupied by them, maintainability of—*

The plaintiff and the defendants were some of the co-sharers in a Zemindari. They purchased certain holdings under the Zemindari and occupied them. The present suit was for the recovery of rent from the defendants in respect of holdings occupied by them. *Held*, in this case, there was no agreement by the co-sharers among themselves, that the occupying share-holder should pay, separately, for the land he occupied, a fixed sum by way of rent to his co-proprietor. Though a co-sharer can, in a properly constituted suit, recover his share of the profits of the land, he cannot do so in a suit framed on the footing of landlord and tenant, for that relation does not exist between the parties. Appeal allowed and suit dismissed.

Landlord and Tenant.—(Continued).

Grindra Chandra Pal Chowdhry v. Sreenathu Pal Chowdhry, 32 C. 567 = 3 C.L.J. 141.

MACLEAN, C.J. and HOLMWOOD, J.

(5) *Co-sharers—Suit for arrears of rent or suit for settlement of accounts.*

•H. L. (plaintiff), was in exclusive possession of a 12 anna share of the cultivated area of a village; R was in exclusive possession of the other 4 annas. The uncultivated area was their joint property in the proportion of 12 to 4. An agreement was entered into as follows:—"If a co-sharer of village cultivate waste land newly broken up, rent at the rate payable by the tenants shall be taken from him." The defendant, R, broke up some of the uncultivated land. H. L. sued R as tenant for arrears of rent. *Held, on these facts*, that the suit was properly brought and that it was not necessary for the plaintiff to sue for a settlement of accounts. **Hub Lal v. Ram Charan**, A.W.N. (1906), 141.

RICHARDS, J.

(6) When the tenant of a non-transferable holding executes a usufructuary mortgage of it, places the mortgagee in possession, abandons the holding and leaves the village, the landlord is entitled to treat the mortgagee as a trespasser and to ask for his ejection (a). **Rasik Lal Dutt v. Bidu Mukhi Dasl**, 10 C. W. N. 719 = 4 C.L.J. 306 = 83 C. 1094.

RAMPINI and MOOKERJEE, JJ.

Reference.—(a) 10 C. W. N. 499 = 3 C. L. J. 222, F.

(7) *Lease of a ghat with jote lands, rights of occupancy acquired over the jote lands, liability to ejection from the ghat not affected by.*

Suit to recover *khas* possession of a ghat. The ghat together with certain jote lands had been leased out for five years to the defendant's predecessors in title at a certain annual *jama* both for the jote land and for the ghat. These, were held over by the defendants for a long time beyond the said five years. *Held*, though plaintiffs could not get rid of the defendant, so far as the jote lands were concerned, by reason of the fact that the latter had acquired the position of an occupancy rayat, as regards those lands, yet the defendant's position as regards the ghat was entirely different, no occupancy right having been acquired in the same and that plaintiffs were, therefore, entitled to a decree against the defendant for *khas* possession

Landlord and Tenant.—(Continued).

of the ghat sued for. **G. S. Hayes v. Ghina Barhi**, 38 C. 450.

MACLEAN, C.J. and MOOKERJEE, J.

(8) *Tenure of groves—Grove—tenure, incidents of—Resumption of grove piecemeal—Land lord and groveholder, rights of—Contract to resume grove by portions.*

Held, that, where a plot of land had been given to a person to plant a grove thereon, the landlord was presumably not entitled to enter into possession of the portions of the grove which had become vacant or to cultivate them himself or to let them for cultivation to others. The plot must be taken to have been granted as a whole and the tenure must stand or fall as a whole, unless some custom or contract is shown to the contrary. In the absence of proof of such a custom or agreement, it must be held that the grantor of the plot gives the grantee a right to occupy the whole plot so long as it retains the character of a grove. **Jwala Singh v. Sahab Din Singh**, 9 O. C. 109.

CHAMIER, J.C.

References.—S.D. B. R. No. 2 of 1892. S.D. B.R. No. 7 of 1893, 2 O.C. 79, R.

(9) *Occupancy rights—Abandonment.*

An occupancy tenant cannot be said to have abandoned his holding merely because he had transferred it by mortgagee which he subsequently redeemed, and attempted to sell against the rights of the landlords. **Mit Singh v. Muhammad**, 36 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

(10) *Land let to tenant for the purpose of planting grove—Property in trees.*

Where land has been let to a tenant for the special purpose of planting a grove thereon, the trees, in the absence of any custom or contract to the contrary, are the property of the tenant. **Haidar Ali Khan v. Gangu**, A.W.N. (1906), 204.

KNOX, J.

Reference.—A.W.N. (1901), 52, D.

(11) *Houses occupied by tenants—appurtenant to their holdings—Ejection—adverse possession.*

The defendants, cultivatory tenants, built and occupied two houses in the village for over twelve years, *held* that the buildings were appurtenant to their holding and so long as the cultivated lands in the village they were entitled

Landlord and Tenant.—(Continued).

to occupy it. If they were not in possession as tenants, their possession would be deemed to be adverse (2). **Dabri Lal v. Dhola Rai**, 8 A.L.J. 619=A.W.N. (1906), 243.

BANKRUPT, J.

Reference.—(a) 27 A. 81. R.

(12)—*Right of tenant to rebuild fallen house—House in Meerut City—House in village.*

Held, that the owner of an enclosure in the city of Meerut could not prevent the owner of a fallen house in that enclosure from re-building it. The case of a house in a village distinguished. **Mahomed Altaf Hussain v. Mir**, A. W.N. (1906), 179.

AIKMAN, J.

(13) In a case where it was quite uncertain as to what was the date from which a tenancy in respect of non-agricultural land ran.

Held, per **RAMPINI, J.**—That the presumption was that the tenancy was a monthly tenancy expiring with the last day of each month of the Bengali year.

Where the notice to quit with respect to such a tenancy was dated the 25th July, 1899, and was served on the tenant on the 8th of August following, and the tenant was desired to quit on the last day of the month of *Chait* 1906 (12th April, 1900).

Held, per **RAMPINI, J.**—That the notice was valid.

Further, that, when such notice was given on behalf of Government, the Collector was competent to sign it. **Rakhai Chandra Tewary v. The Secretary of State for India in Council**, 10 C. W.N. 841.

RAMPINI and WOODROFFE, JJ.

(14) *Transfer of non-transferable holding—Efficient—Abandonment—Sale.*

GHOSH, C.J.—Where a tenant of a non-transferable holding sold his holding,

held—In a suit by the landlord for recovery of possession from the transferee, that, if the transaction of sale was not meant to be an operative one, the title to the property still continued with the tenant.

That the true question was whether there was an absolute abandonment of the holding by the tenant such as would entitle the landlord to treat the purchaser as a trespassor. If the defendant was holding possession on behalf of

Landlord and Tenant.—(Continued).

the tenant, he could not be evicted. **Kashar Munda v. Gangai Charan Goga Ghosh**, 10 C.W.N. 1038=39 C. 1919.

RAMPINI and GHOSH, JJ.

(15) *Suit by purchaser of the right to recover arrears of rent, against both land-holder (vendor) and tenant—Jurisdiction—Civil and Revenue Courts.*

Held that a suit for recovery of arrears of rent the right to recover which had been purchased by the plaintiff from the land-holder, both the tenant and the land-holder vendee being named as defendants, was primarily a Revenue and not a civil Court suit. **Murlidhar v. Chajju**, A. W. N. (1906), 304.

KNOX and RICHARDS, JJ.

(16) *Rights of zamindars in respect of house-sites and grove-lands—wajib-ul-ars—Construction of document.*

The plaintiffs purchased six plots of land consisting partly of groves and partly of land formerly the sites of houses, but since brought under cultivation, and, failing to get their names recorded as absolute owners of the plots, brought a suit virtually for a declaration of their proprietary title.

It was shown in evidence that the inhabitants of the village in which the plots in suit were situated were in the habit of selling and transferring their houses. The *Wajib-ul-ars* set forth that the occupiers of houses had this power, but all through the entries the zamindar was recognized, and it was stated that if a new house was to be built with the permission of the zamindar it must be obtained. The entry in the *Wajib-ul-ars* as to groves was to the effect that isolated trees and clumps of bamboos planted by tenants might be cut by them; as to rent-free groves, if the trees should die out and the land be brought into cultivation, rent must be paid, and that if a new grove was to be planted the leave of the zamindar must be obtained.

Held, that the inference of law derivable from the facts stated above was that the plaintiffs were not the absolute owners of the plots purchased by them **Kishan Kunwar v. Fatch Chand**, A.W.N. (1906), 307.

KNOX and RICHARDS, JJ.

Landlord and Tenant.—(Continued).

(17) *Agreement to let a house—Breach of contract by tenant before time for performance—Measure of damages—S. 73, Contract Act.*

Where a plaintiff agreed to let a house to defendant, and placed it at the latter's disposal, but the latter refused to take the house and broke the contract, without any justification, plaintiff was held entitled to bring an action for damages for the breach.

The measure of damages is the loss of rent suffered by the landlord, after deducting such sum as he may recover from another source, and it is the landlord's duty to make reasonable efforts to secure another tenant or otherwise cover the loss, unless he sues for specific performance.

S. 73, Contract Act, does not help the defendant damage. The caused naturally arose in the usual course of things from the breach and was not indirect or remote. **Lashmi Narain v. Vernon**, 187 P. R. 1906.

REID, C. J.

Reference:—L. R. 7 Ex. 111, F.

(18) *Suit to recover rent—Relationship of,—Contract—Privity of estate.*

In a suit to recover rent, the plaintiff must establish that the relationship of landlord and tenant existing between the parties rests either on contract or privity of estate. **Manjappa v. Venkatesh**, 8 Bom. L. R. 988.

JENKINS, C.J. and BEAMAN, J.

(19) *Suit in ejectment—Tenant's transferee—Estoppel.*

Plaintiff's late *Karnavan* let certain land to the 1st defendant, who transferred his right to the second and third defendants. The lease having expired, the plaintiff sued to recover the land. As possession of the land was obtained by the third defendant from the tenant of the plaintiff's *Karnavan* (i.e., 1st defendant), held, he cannot oppose the plaintiff's claim on any ground such as that the land belongs equally to the *Tavashi* of himself and of the plaintiff. **Parattahath Kunhi Mayan v. Parattahath Muhammad**, 16 M.L.J. 351.

BODDAM and SANKARAN NAIR, JJ.

Reference:—13 M. 335, F.

(20) *Lease, occupation of village without—Use and occupation, suit on account of compensation for—Procedure in appeal—Code of Civil Procedure, Ss. 562 & 566.*

Landlord and Tenant.—(Continued).

Held, that, where a person had with the consent of the *taluqdar* entered into the collecting possession of a village as a lessee and had remained so for a certain period, though without a formal and registered lease, a suit for money against the occupant on account of compensation for use and occupation of the village was maintainable (s). **Mohammed Hasan v. The Deputy Commissioner, Bahraich**, 9 O. C. 362.

CHAMBER and EVANS, J. CS.

Reference:—(a) 9 O. C. 296, R.

(21) *Denial of relationship—Burden of proof—Contumacious possession—Damages.*

It is settled law that, when the relationship of landlord and tenant has once been established, it lies upon the tenant, particularly if still in possession of the premises, to prove that the relationship has ceased to exist.

Held, that double the original rent was a fair measure of what should be allowed to the plaintiff as damages for the contumacious possession of the premises by defendant. **Qamar-ud-Din v. Ahsan Ilahi**, 140 P.L.R. 1906.

ROBERTSON, J.

Reference:—(a) 4 C. 340, R.

(22) *Presumption that zemindari tenant has occupancy rights, rebuttal of, by muchilikas.*

In this case, the presumption that a zemindari tenant has permanent occupancy rights was held rebutted by the several *muchilikas* executed by the tenant from time to time for a period extending over ten years, in which he stated that he was bound to surrender the land at the end of the year at the landlord's pleasure and without any notice. **Kandregula Suryanaryana Row v. Somayya**, 16 M.L.J. 557.

DAVIES & BENSON, JJ.

(23) *Entry—evidence of rent in favour of landlord—See ACT VIII of 1885 (BENGAL TENANCY), No. 37, 11 C.W.N. 153.*

(24) *Suit by landlord for rent—Defendant's plea that landlord is only a benamidar, validity of—See EVIDENCE ACT, No. 35, 141 P.R. 1906.*

(25) *Landlord enhancing rent, duty of, to give previous notice to tenant under S. 78 of the Berar Land Revenue Code—See REGT, No. 1, 2 N.J.R. 145.*

(26) *Suit for value of share of produce due from tenant—Suit brought more than three*

Landlord and Tenant.—(Continued).

years after rent was due by custom, but within three years after tendering *patta*—Limitation—See ACT VIII of 1865 (RENT RECOVERY, MADRAS), No. 6, 1 M.L.T. 315.

(27) Suit for rent and for a declaration as to the propriety of *patta* tendered—Small Cause Suit—Second appeal—See CIV. PRO. CODE, No. 313, 1 M.L.T. 814.

(28) Exchange of *patta* and *muchilika* between superior landholder and *Inamdar* holding under him—See ACT VIII of 1865 (RENT RECOVERY, MADRAS), No. 8, 16 M.L.J. 489.

(29) *Kabuliat* from tenant is not a lease or the equivalent of a lease by landlord—See TRANSFER OF PROPERTY ACT, No. 111, 9 O.C. 296.

(30) Rent paid by tenant, whether landlord could appropriate as for interest—See ACT VIII of 1885 (BENGAL TENANCY), No. 22, 11 C.W.N. 110.

(31) Drainage charges, whether recoverable from tenant by landlord—See ACT VI of 1880 (BENGAL DRAINAGE), No. 1, 11 C.W.N. 57.

(32) Consent decree in terms of compromise—Forfeiture clause in the decree—Court's power to relieve against forfeiture—See CIV. PRO. CODE, No. 221, 8 Bom. L.R. 813.

(33) Adverse possession of site for over 12 years—Revocation of license—House of a permanent character. See EASEMENTS ACT, No. 4, 3 A.L.J. 760.

(34) Agreement dividing holdings—Suit for possession of a moiety—See ACT II of 1901 (N.W.P. TENANCY), No. 9, 3 A.L.J. 735.

(35) Sale in execution of a decree for arrears of rent at the instance of a co-sharer landlord—Interest of unrecorded tenant how affected—See ACT VIII of 1885 (BENGAL TENANCY), No. 25, 10 C. W. N. 176.

(36) Liability to execute repairs—Denial of liability, by landlord—Burden of proof—See TRANSFER OF PROPERTY ACT, No. 112, 3 A.L.J. 134.

(37) Tenant dispossessed by trespasser—Right of landlord to sue trespasser—Limitation—See ADVERSE POSSESSION, No. 1, 10 C. W. N. 343.

(38) Right of landlord to issue *patta* to tenant for unassessed house sites—See ACT VIII of 1865 (RENT RECOVERY, MADRAS) No. 8, 29 M. 81.

Landlord and Tenant.—(Continued).

(39) Sale by occupancy tenant of his holding to a third person—Right of landlord to eject—See ACT VIII of 1885 (BENGAL TENANCY), No. 30, 3 C.L.J. 343.

(40) Entry by Settlement-Officer in record-of-rights as tenant—Tenant precluded from proving he is a proprietor—See ATTESTATION, No. 1, 2 N.L.R. 65.

(41) Validity of contract between—Providing for former's re-entry on latter's death—See ACT VIII of 1885 (BENGAL TENANCY), No. 65, 10 C.W.N. 539.

(42) Suit by landlord for ejectment of tenant—provision of *Kabuliat* inconsistent with the Agra Tenancy Act—Maintainability of suit—See ACT II of 1901 (N.W.P. TENANCY), No. 10. A.W.N. (1906), 110.

(43) *Churland*—Presumption of holding *chur* land continuously for twelve years—Burden of proof—See ACT VIII of 1885 (BENGAL TENANCY), No. 9, 33 C. 444.

(44) Tenant's building a house in village *abadi* and occupying it for more than twelve years, whether will constitute adverse possession against zemindar landlord—See ADVERSE POSSESSION, No. 6, 3 A.L.J. 627.

(45) Rent—Apportionment—Transfer of lessor's interest by operation of law—See TRANSFER OF PROPERTY ACT (IV of 1882), No. 1, 33 C. 786.

(46) Suit by landlord on a bond for arrears of rent—Jurisdiction—Suit cognizable by what Court—See JURISDICTION (OF CIVIL AND REVENUE COURTS), No. 3, 90 P.L.R. 1906.

(47) Right of landlord to mandatory injunction in respect of a building erected by tenant—Landlord precluded by his conduct—Discretion of Court—Stranger building on agricultural holding with permission of tenant—Position of—See INJUNCTION (MANDATORY), No. 1, 29 M. 497.

(48) Surrender by tenant of his holding—Issue of notice by tenant condition precedent—See ACT II of 1901 (N.W.P. TENANCY), No. 16, A. W.N. (1905), 201.

(49) Landlord's right to eject a tenant-at-will—An inherent right of the tenure and not excluded by other special remedies provided by deed—See ACT XVI of 1887 (PUNJAB), No. 4, 10 P.R. 1905 (Rev.).

Landlord and Tenant.—(Concluded).

(50) Suit for enhancement of rent by a majority of landholders, maintainability of—See ACT XVI OF 1887 (PUNJAB TENANCY), No. 3, 3 P.R. 1905 (Rev.)

See, also, I, 564; 586; Act XII of 1881 (N.W.P.), No. 6; Act II of 1901 (N.W.P. Tenancy), Nos. 5, 11; Act VIII of 1885 (Bengal Tenancy), Nos. 10, 33, 36, 21-a; Act XVI of 1887 (Punjab), No. 6; Easements, No. 6; Hindu Law Religious Endowments, No. 2; Lessee and Lessor, No. 4; Limitation Act, No. 116; Mortgage (Sale), No. 4; Negligence, No. 2; Rent, No. 8; Transfer of Property Act (IV of 1882), Nos. 81 and 84; & Village Abadi, No. 1.

Land Registration Act (Bengal.)

(1) S. 78—Suit for rent by assignee from unregistered proprietor—Maintainability.

S. 78 of the Act has no application to the case of a person to whom rent has been assigned by a proprietor whose name has not been registered under the Act. **Syed Serapat Hossain v. Tarini Prosad Dobey**, 11 C.W.N. 141.

GHOSE, C.J., and CARPENTERS, J.

Land Revenue Act (C. P. Act XVI of 1889).

(1) S. 87—awards of proprietary rights at the settlement, legal effect of the grant of—

The award of proprietary rights, at the time of the settlement, did not have the effect of conferring, on the grantee, any rights new and not pre-existent; nor did it take away, from the grantee, rights obtained and held otherwise than through the award. The effect of the award was to make the estate heritable and alienable, but these new incidents of tenure were only to be enjoyed side by side with any restrictions imposed by the personal law of the holder. If, for instance, an estate was self-acquired in the hands of a man, it remained self-acquired; and if it was *stridhan* in the hands of a woman, it continued to be *stridhan*. So, when any question arises as to the devolution of property or as to the power of alienation, it is necessary to go behind the grant and to see what the position of the grantee was prior to the award and to ascertain the nature of the pre-existing rights in the grantee. **Nilkanth Rao Udhoji v. Sambhoo Mali**, 2 N.L.R. 1.

ISMAY, J.C.

Land Revenue Act (C. P. Act XVI of 1889).—(Concluded).

(2) S. 151—Award of Collector under—subsequent reference to the Court under the Land Acquisition Act, S. 19, whether could be made.

In accordance with the provisions of S. 151 of the Central Provinces Land Revenue Act, the Collector awarded to the plaintiff a sum of money as compensation for the infringement of his rights. Subsequently, on the application of the plaintiff, a reference was made by the Collector under S. 19 of the Land Acquisition Act, but the District Judge refused to act upon the reference, on the ground, that there was no provision in S. 151 of the Act regarding reference to Civil Court. *Held*, there is nothing in the Act restricting the jurisdiction of Civil Courts to determine the compensation payable under S. 151. The intention of the section, clearly, is that those provisions of the Land Acquisition Act, which relate to the making of an award, including the reference to the Court, shall be applied in the matter of the determination of the compensation payable under the section. **Govind Rao Badkas v. Collector of Nagpur**, 2 N.L.R. 172.

ISMAY, J.C.

Land Revenue Act (N.W.P. and Oudh).

—See ACT III OF 1901 (N.W.P. AND OUDH.)

Land Revenue Act (Punjab).

—See ACT XVII OF 1887 (PUNJAB.)

Land Revenue Code (Bombay).

—See ACT V OF 1879 (BOMBAY).

Land Revenue Code (Berar).

(1) S. 78, Landlord's duty to give notice under, before enhancing rent—See RENT, No. 1, 2 N.L.R. 145.

(2) S. 205, pre-emptor's right under, when could be defeated by re-sale to vendor—See PRE-EMPTION, No. 42, 2 N.L.R. 150.

Land Revenue Rules.

—See I, Revenue sale, No. 1.

Land and Revenue Regulation.

(1) S. 53 (2)—Interest in land under, whether an easement of way is an—Civil Courts, whether, could entertain a suit regarding such right.

Plaintiff sued for a declaration of a right of way as an easement over certain State Land in the occupation of defendant. The latter object-

Land and Revenue Regulation.—(Concluded).

ed that the suit was barred by S. 58 (2) (ii) of the Regulation and the question had to be decided what was to be understood by the word 'interest' in the said section.

Held, the present suit to establish a right of way should be regarded as a suit to establish an 'interest' in State Land within the meaning of S. 58 of the Regulation and that the jurisdiction of the Civil Courts to entertain the suit was barred by the Regulation. **Mi Ma Gyi v. Nga Shwe Zin**, U.B.R. (1905), Land and Revenue Regulation, 1.

SHAW, J.C.

References.—U.B.R. (1897-01), 257 and 209, R.

Law Merchant.

—reproduced in the Negotiable Instruments Act—See XXVI of 1881 (NEGOTIABLE INSTRUMENTS), No. 4, 1 M.L.T. 377.

Lease.

- (1) *Act No. IV of 1882 (Transfer of Property Act), Ss. 10, 110 (g)—Perpetual lease—Covenant against alienation without covenant for re-entry—Construction of document.*

Where a perpetual lease of a village to the lessee and his heirs contained a covenant against alienation by the lessee, but no covenant giving to the lessor a right of re-entry upon breach of the former covenant, it was *held* that the successors in title of the lessor could not recover the property, the subject of the lease, from the alienees of the successors in title of the lessee. **Netrapal Singh v. Kalyan Das**, A.W.N. (1906), 60=3 A.L.J. 196=28 A. 400.

KNOX and AIKMAN, JJ.

References.—17 C. 826 and 26 M. 157, F.

- (2) A permanent lease including "all right of various kinds" with the exception of the homestead, includes the minerals. **Shyama Charan Mundi v. Abhiram Goswami**, 3 C.L. J. 806=10 C.W.N. 738=33 C. 511.

MACLEAN, C.J. and GRIDT, J.

- (3) *Lambardar—powers to grant a long lease—Lease for seven years.*

A *lambardar* has no power to grant a lease of co-parcenary land beyond such term as the circumstances of the particular case require (a). In this case, the *lambardar* had granted a

Lease.—(Concluded).

lease for seven years, which was set aside. **Chattray v. Nawala**, 3 A.L.J. 639=A.W.N. (1906), 257.

STANLEY, C.J. and KNOX, J.

References.—(a) A.W.N. (1897), 207 and 20 A. 488, F.

- (4) *Power of lambardar to grant a—for a period of 10 years—See LAMBARDAR, No. 1, 3 A.L.J. 655.*

(5) *Whether—to cut trees in a forest is a lease of an interest in immovable property—See REGISTRATION ACT (III of 1887), No. 5, 3 A.L.J. 138.*

(6) *A 'raiya' taking a Zuripeshgi—construed as a cultivating lease—Occupancy, right of, whether can arise—See ACT VIII of 1885 (BENGAL TENANCY), No. 15, 10 C.W.N. 351.*

(7) *Provision in—inconsistent with the Agra Tenancy Act, effect of, on the right of ejectment—See ACT II of 1901 (N.W.P. TENANCY), No. 10, A.W.N. (1906), 110.*

(8) *Grant of Putni of certain mahals as well as of lease of certain jote-lands within them at a fixed indivisible rent—See REGULATION VIII of 1819 (BENGAL), No. 5, 3 C.L.J. 373.*

(9) *—exceeding one year, when not compulsorily registrable—See REGISTRATION ACT (III of 1877), No. 16, 3 Bom. L.R. 580.*

(10) *Notice to quit when to be given—presumption as to monthly tenancy—See TRANSFER OF PROPERTY ACT, No. 111-a, 16 M.L.J. 588.*

(11) *Granted by a manager without sanction of Collector whether void or voidable—See ACT IX of 1879 (COURT OF WARDS, BENGAL), No. 2, 10 C.W.N. 126.*

See, also, I, 588-592; Land lord and Tenant, Nos. 6, 11, 24, 39; Lessor and Lessee, No. 4; Limitation Act, No. 116; Minor, No. 5; Mortgage (Sale), No. 1; Registration, No. 5; Registration Act, No. 2; Specific performance, No. 5; Transfer of Property Act, Nos. 79, 80, 81, 82.

Legacy.

See I, Hindu Law (Will), No. 7.

Legacy (Specific).

See I, Act V of 1881, No. 8.

Legal practitioner.

(1) Right of one to hold the brief of another and argue the case in Court—See PRACTITION (MISCELLANEOUS), No. 1, 9 O.C. 85.

(2) Effect of certificate and affidavit of Legal Practitioner's fee being filed subsequent to judgment—See RULES OF THE N.W.P. (HIGH COURT), No. 1, A.W.N. (1906), 169.

See, also, F. 596-599.

Legal Practitioner's Act (XVIII of 1879).

See ACT XVIII OF 1879 (LEGAL PRACTITIONERS).
Legitimacy.

Fact of child being born during wedlock not conclusive proof—See EVIDENCE ACT, No. 29, 28 P.R. 1906.

See, also, I, Act XV of 1856 (Widow Marriage), Nos. 1 & 2;

Lessor and Lessee.

(1) Mineral and subsoil rights, reservation of, by lessor—Subsequent lease of mineral rights—Incidental rights, and all other rights over the surface.

The lessor of the surface-land, in excepting the coals and other minerals, impliedly reserves to himself, as a necessary incident, the right to dig for and win the coal.

The reservation or grant of mineral rights, apart from the surface rights, must be taken to carry, as incident to it, the power not only to go upon the land and work the minerals known to be underground, but to go on the land and conduct the ordinary preliminary operations, by boring or otherwise, to ascertain (when it is not known) if there are minerals underground.

The holder of the mineral right is entitled to the reasonable use of such portion or portions of the surface-lands as he may require in the lawful and reasonable exercise of such rights.
Rameswar Malia v. Ram Nath Bhattacharjee, 3 C.L.J. 106—38 C. 462.

HEWDERSON and GEIDT, JJ.

See, also, I, 594; *Landlord and Tenant*, No. 9; *Lease*, No. 12 and *Transfer of Property Act*, No. 81.

Letters of Administration.

—with copy of will annexed granted to a legatee in respect of his legacy—Suit by another legatee in respect of his legacy, maintainability of—See ACT X OF 1865 (INDIAN SUCCESSION), No. 14, 10 C.W.N. 864.

See, also, I, Act X of 1865 (Succession), No. 4; *Court Fees Act*, No. 15; *Limitation Act*, No. 19.

Letters Patent (Bombay).

S. 13—See I, *Civil. Pro. Code*, No. 43.

(1) Cl. 12—Leave of the Court—jurisdiction of the Court to entertain suit—Rules and Forms of the Bombay High Court, Rule 361—Suit against a firm—Addition of the names of partners constituting the firm—Practice and procedure.

The plaintiffs sued, on the 19th November, 1904, on the original side of the Bombay High Court, "the firm of Shaw, Wallace and Co., as it was constituted on the 18th September, 1898, and the partners in the said firm on that date." The action was for breach of an agreement, dated the 18th September, 1898, executed by the defendant firm in favour of plaintiff at Calcutta. The plaint alleged "the defendants carry on business in Bombay; part of the cause of action arose in Bombay." Prior to the service of summons and pursuant to a chamber order of 22nd December, 1904, the plaint was, on the 7th January, 1905, amended by the addition of the names of Messrs. Wallace, Ashton, Greenway, Hue and Meaking. The first four were, at the date of plaint and even afterwards, carrying on business; and Secharau, one of the partners, having died in the meanwhile, his executor Meaking was also added as a party defendant. Before the death of Secharau, the partnership took a new partner; and this new partnership opened a branch office in Bombay. Prior, however, to the presentation of the plaint, leave was granted under cl. 12 of the Letters Patent. It was objected, on behalf of the firm, that leave under cl. 12 should not have been granted: that the order allowing the amendment was wrong and that the Court had no jurisdiction to receive the suit:—

Held, (1) that Messrs. Wallace, Ashton, Greenway and Hue according to the allegations in the plaint, were liable as co-partners to the plaintiffs and none the less they would be so because the estate of the deceased co-partner might also be liable together with them. It was also stated that they were carrying on business within the jurisdiction and this would be so though there might be associated with them a partner who was not a member of the firm when Shaw, Wallace & Co., entered into the agreement on which the suit was based.

(2) That the case fell within Rule 361 of the Rules and Forms of the Bombay High Court.

(3) That the suit as originally framed was rightly received irrespective of leave under cl. 12

Letters Patent (Bombay).—(Continued).

of Letters Patent and the defendants' contention that the Court had no jurisdiction failed.

(4) That Meaking, as the executor of Secho-rau, was wrongly added as a defendant.

Rule 361 of the Rules and Forms of the Bombay High Court does not extend the jurisdiction of the Court; it merely sanctions the use of the firm's name as a convenient description of its several members and exempts a plaintiff from the obligation of setting forth their names at length. **Shaw, Wallace and Co. v. Gordhandas Khato**, 8 Bom. L.R. 56=30 B. 364.

SIR LAWRENCE JENKINS, C.J., and BATTY, J.

(2) *Cl. 12—Contract between persons residing in different places—cause of action, accrual of, at the place for payment of debt—jurisdiction of High Court on leave to sue granted under cl. 12.*

Defendants, residents of Phulgaon, entered into certain transactions as commission agents of plaintiff, who was a resident of Bombay. Plaintiff obtained leave under cl. 12 of the Letters Patent and sued the defendants in the High Court of Bombay for the amounts due to him on account of those transactions. Defendants pleaded want of jurisdiction. *Held*, that, as the defendants rendered accounts and promised to send *hundies* to the plaintiff at Bombay and as instructions were sent and demand was made to the defendants from Bombay, the material part of the cause of action arose within the jurisdiction of the High Court at Bombay (b).

TYABJI, J.—Even where no specific contract exists as to the place of payment, the ordinary principle of law is that it is the duty of the debtor to make the payment where the creditor is (a).

The expression "cause of action" means the bundle of facts, which it is necessary for the plaintiff to prove before he can succeed in his suit, not irrelevant, immaterial facts, but material facts without which the plaintiff must fail. If any of these material facts have taken place within the jurisdiction of the Court, then leave can be given under cl. 12 of the Letters Patent. But if no such material facts have taken place within the jurisdiction of the Court and leave is given, then it is open to the defendant to content at the hearing that the Court has no jurisdiction. **Motilal Pratabchand v. Surajmal Joharmal**, 30 B. 167.

TYABJI, J.

Letters Patent (Bombay).—(Concluded).

References:—(a) 20 G. B. D. 152, P. (b) 12 B. D. 103 (107), 36 Ch. D. 453 (464) and 11 B. 257, R.

See, also, I, 595-596 and Contract, No. 7.

(8) *Cl. 13—Court of the Resident of Aden—High Court, superintendence of the, power of—Act II of 1864—Charter Act, S. 15—Transfer of case.*

The Court of the Resident of Aden is subject to the superintendence of the High Court of Bombay within the meaning of cl. 13 of the Letters Patent of 1865.

Act II of 1864 makes the Court of the Resident of Aden subject to the superintendence of the High Court of Bombay with sufficient thoroughness and completeness so as to satisfy the requirements of cl. 13 of the Letters Patent.

Cl. 13 of the Letters Patent cannot be construed by reference to S. 15 of the Charter Act; the power transfer contained in the latter, which is dependent upon the exercise of appellate jurisdiction has nothing to do with the power of removal conferred by the former and is based upon the power of superintendence. **The Municipal Officer, Aden v. Hajee Ismail Hajee Allana**, 3 C.L.J. 5=3 A.L.J. 53=10 C. W.N. 185=8 Bom. L.R. 4=1 M.L.T. 1=16 M.L.J. 73 (P.C.)=30 B. 246.

LORD MACNAGHTEN, SIR FORD NORTH, SIR ANDREW SCOBLE and SIR A. WILSON.

Letters Patent, 1865 (Calcutta).

(1) *Cl. (10)—Advocate, professional misconduct of—Champertous agreement with client.*

It is professional misconduct for an advocate to stipulate for or agree with his client to accept as his fee or professional remuneration a share of the property, fund, or other matter in litigation for his services as advocate in such litigation upon the successful issue thereof.

Semble: The same principle is applicable to the case of a pleader.

Per HILL, J.—Any arrangement between counsel and client which brings the personal interests of the former into conflict with his duty as an advocate, is unprofessional. *In the matter of an Advocate*, 4 C.L.J. 259.

MACLEAN, C.J., and MACPHERSON, BANKER-JEE, HILL and STEVENS, JJ.

S. 15—*See* I, 596 and No. 3.

Letters Patent, 1885 (Calcutta).—(Concluded).

(2) *Cl. 15—Appeal—Meaning of “judgment”—application for extension of time for appealing.*

An order refusing to enlarge the time for preferring an appeal, which was already dead at the time, cannot be regarded as a “judgment”, within the meaning of cl. 15, and is not appealable under that clause (a).

Parties should make their application for extension of time within which to file the appeal, before the time for appealing had run out. *Gobinda Lal Das v. Shiba Das Chatterjee*, 33 C. 1828.

MOORE, C.J., HARBOINGTON & CASPERSZ, JJ.

References:—(a) 8 B.L.R. 433, 18 C. 132, 21 C. 473, 9 C. W.N. 502, R. 5 C.W.N. 781, D.

(3) S. 36—See ACT XX OF 1847 (IMPERIAL), No. 1, 2 C.L.J. 511.

See, also, I, Act XX of 1847 (Imperial), No. 2. S. 39—See I, 597.

Letters Patent (Madras).

(1) *Cl. 12—Jurisdiction of High Court over a foreigner defendant—cause of action arising within limits of the Court—Meaning of the term ‘dwell.’*

It was argued in this appeal on behalf of the appellant that the High Court had no jurisdiction *in personam* over the defendant, by reason of the fact that he was a foreigner. *Held*, giving jurisdiction over an absent foreigner, where the cause of action against him arises within the local limits of the jurisdiction of the Court, is a legitimate exercise of sovereign right and cl. 12 of the Letters Patent ought to be construed as conferring jurisdiction on the High Court in such cases even over a non-resident foreigner. In the present case, however, there was the additional ground that the defendant was within the local limits of the Court's jurisdiction on the day the suit was instituted, and so, even granting the Court could not otherwise have had jurisdiction, the mere fact of his presence then within the limits would give jurisdiction. With reference to this, two contentions had been urged on behalf of the appellant but both of them were thrown out as untenable. The first of the contentions was that the presence of a foreigner, in order to confer jurisdiction, should be an abiding in the place involving permanency as opposed to a mere temporary stay. *Held*, overruling the contention, that, according to the authorities, territorial jurisdiction attaches upon all persons

Letters Patent (Madras).—(Continued).

either permanently or temporarily resident within the territory while they are within it. An alien, however transient his presence may be, is entitled to a temporary protection and owes in return a temporary allegiance. The fact, therefore, that the person was a foreigner, making but a brief stay within the territory could not deprive the Courts of jurisdiction over him.

The next contention, that, to found jurisdiction over a foreigner present within the limits, there should, in addition, be personal service of process on him while within the territory, or at least such process should have been actually issued, during the stay of the defendant, was also held untenable on the ground that jurisdiction springs up as the result of allegiance existing at the time of commencement of the action and not of any subsequent process in it. The suit is commenced for the purpose by the presentation of the plaint as laid down by S. 48, Civ. P. Code and as it appears, *inter alia*, from the terms of the very forms of summons to the defendant prescribed by Rule 22 of the Rules of the High Court on the original side. Matters connected with service of process, though they may affect the progress of a cause or its result, are obviously in their nature matters of mere procedure and in no sense jurisdictional. Jurisdiction, therefore, over a foreigner present within the Court's limits is independent of actual service of process on him within the territory. In the present case, accordingly, the High Court had jurisdiction, under the section, for the reason that the defendant was, at the time of the commencement of the suit, dwelling within the ordinary original jurisdiction of the High Court and also on the ground that part of the cause of action accrued within those limits, leave having been obtained as required by the section.

Also, a comparison of the section in question with the corresponding provisions which governed the supreme Court shows an intention on the part of the framers of the section to extend rather than limit, the jurisdiction and powers of the High Court in the matter. Nor should the word ‘dwell’ in the article be understood to have been used in a narrow or technical sense but should be taken as including the mere presence of a foreigner within the local limits of jurisdiction irrespective of a length or nature of his stay. *S. Srinivasamoorthy v. N. T. Yen-*

Letters Patent (Madras).—(Concluded).

kata Varada Iyengar, 1 M.L.T. 71=16 M.L.J. 238=29 M. 239.

WHITE, C.J. and SUBRAHMANYA AYYAR, J.

(2) Under cl. 36 of the—where, in the case of a Letters Patent appeal, the Judges of the High Court are equally divided in opinion, the judgment of the Senior Judge will prevail—See **HINDU LAW (TRUSTS), No. 1, 29 M.L.**

See, also, I, 597-598; and Civil Pro. Code, No. 235.

Letters Patent (N. W. P.)

(1) **Ss. 7 and 8—Power of High Court to remove an advocate from the roll for misconduct**—See **RULES OF THE N.W.P. HIGH COURTS, No. 2, A.W.N. (1906), 226.**

(2) **S. 8—Advocate—Misconduct—Publication of articles in a newspaper by the Advocate defaming Judges—Rules 2, 180, 182, 183 and 197 of the Rules of the Court.**

The right of any Barrister to appear in the N.W.P. High Court rests upon his being admitted to the roll of Advocates to the Court and not upon his being called to the Bar.

Under the rules which the High Court is empowered to make by virtue of S. 8 of the Letters Patent, the High Court can, on reasonable cause, suspend or remove any advocate from practice.

Under Rule 2 of the Rules of Court, a Bench of three Judges is empowered to hear and decide all charges of misconduct against Advocates. Rule 197 provides for cases in which the Chief Justice and Judges may, for good cause and without charge or trial, suspend or remove any Advocate.

Any act, which tends to discredit or bring into contempt the order of Advocates of the Court amounts to misconduct of which the High Court can take notice. Acts which on the part of a private individual offend against the dignity of the Court or are calculated to prejudice the course of Justice and are in his case contempts of Court, do not cease to be acts of misconduct, because they are committed by an Advocate. Rather are they aggravated inasmuch as the Advocate is bound to uphold and maintain the dignity of the Court. Acts which scandalise the Court as libels on its integrity, or the integrity of its Judges, officers, and proceedings, are all instances of such misconduct (a).

Hence, when an advocate published in a paper published by him articles throwing dis-

Letters Patent (N. W. P.)—(Concluded).

credit upon the Judges of the Court, and his defence *inter alia* was that he had done so as Editor and not as Advocate of the Court, held, that he was guilty of professional misconduct and the High Court had power to deal with him under S. 8 of the Letters Patent and Rule 2 of the Rules of the Court. *In re Mr. Sarva-dhicary, 3 A.L.J. 592 (F.B.)=1 M.L.T. 252=A.W.N. (1906), 226.*

KNOX, BANERJI and AITMAK, JJ.

References.—(a) 2 Q.B.D. 489 and 9 Q.B.D. 219, R.

(3) **S. 8—See RULES OF THE N.W.P. HIGH COURT, No. 2, A.W.N. (1906), 226.**

(4) **S. 10—Appeal—Revision—Civil Procedure Code, S. 622.**

No appeal under S. 10 of the Letters Patent of the Court will lie from an order of a single Judge of the Court disposing of an application under S. 622 of the Code of Civil Procedure. *Misar Ali v. Ali Ali, A.W.N. (1906), 218=28 A. 188.*

STANLEY, C.J. and BURKITT, J.

References.—14 A. 226; 15 A. 373, 23 B. 691 and 22 M. 109, F.

S. 12—See I, Guardians and Wards Act, No. 1.

Lex Loc.

Custom of succession at variance with the—Burden of proof—See **HINDU LAW (MARRIAGE), No. 1, 3 A.L.J. 209.**

Lex rei sitae.

See I, International Law, No. 1.

Libel.

See I, 598-599; and Civil Pro. Code, No. 313.

Licence.

(1) **Permission to use a piece of land as a cremation ground—Enjoyment of the use—Licensees.**

It appeared that in 1866, on application to the local authorities, the plaintiffs received permission to use the lands in suit as a cremation ground: and the plaintiffs, as a matter of fact, made use of the lands in dispute for the purpose of cremation since 1866:—

Held, that the plaintiffs were mere licensees. **Harl Ganu v. Sakhran Balaji, 3 Bom. L.R. 310.**

RUSSELL, and BATTY, JJ.

(2) **Revocation of—Work of a permanent character—thatched house—See EARNINGS ACT (V of 1889), No. 5, A.W.N. (1906), 216.**

License.—(Concluded).

(3) Landlord and tenant—Adverse possession of site for over 12 years—Revocation of license—House of a permanent character. See EASEMENTS ACT, No. 4, 3 A.L.J. 760.

Life tenant.

• See I, Mines, No. 4.

Light and Air.

See I, Easements, Nos. 1, 2, 3 and 10; and Easements Act, Nos. 4 and 5.

Limitation.

Adverse possession against mortgagor—Effect on mortgagee—Purchase by mortgagee at mortgage-sale—Previous purchase by another at a rent-sale—Preferential title.

The possession of a person, claiming to hold property adversely to the mortgagor, does not become adverse to the mortgagee, who has purchased the property at a sale in execution of a decree obtained on his mortgage, until after the sale, when the ownership in, and the beneficial title to, the land for the first time vests in him (a). *Almadar Mendul v. Mahkan Lal Day*, 10 C.W.N. 904=38 C. 1015.

MACLEAN, C.J. and GEIDT, J.

Reference.—(a) L.R. 7 App. Cas. 285, relied on.

(2) Cornice built by defendant projecting over plaintiff's land—Trespass, plaintiff's right of action for, barred by lapse of twelve years—Right to retain the cornice, acquired by defendant.

Defendant's father built a terraced house higher than the adjoining house of the plaintiff, his neighbour, and constructed a cornice extending a foot beyond his own wall and over hanging ground belonging to the plaintiff.

On the ground that the defendant had not acquired any easement, the cornice not having been in existence for a period of twenty years, the lower Courts declared that the plaintiff was entitled to get the cornice removed.

It was contended on second appeal on behalf of the defendant-appellant that, though he might not have acquired any right by way of easement, yet the cornice having been in existence for more than twelve years, the plaintiff was not entitled to interfere with it. *Held*, that, where a person erects any building, overhanging the land of another, an action for

Limitation.—(Continued).

trespass lies against him, subject to the plaintiff's right of action becoming barred by limitation and to the defendant thereby acquiring, on account of lapse of time, a right to the space occupied by him. In the present case, accordingly, limitation began to run against the plaintiff from the time when effective possession was taken by the defendant, by building his cornice, which was long before twelve years prior to the suit; and plaintiff's claim to remove the cornice became barred by time resulting in the defendant's having acquired a right to the space occupied by the cornice and having become entitled to retain the cornice without interference. *Ratnavalu Mudalliar v. Kolandavalu Pillai*, 16 M.L.J. 281=29 M. 5 11.

MOORE and SANKARAN NAIR, JJ.

References:—3 B. 174, F. and 30 C. 508, *Distd.*

(3) Commencement and period of—for suit by a vendor for unpaid purchase-money which the defendant-vendee had agreed to pay to the vendor's creditors but failed to pay accordingly—See VENDOR AND PURCHASER, No. 1, 16 M. L. J. 20.

(4) Suit filed on last day of limitation on an insufficient Court-fee—The insufficiency not discovered until after expiry of limitation for the suit—Suit held barred by—See COURT-FEES ACT, No. 14, A. W. N. (1906), 21.

(5) Second application for—by attachment and sale of properties, only a small portion of the decree being realized by attachment and sale on the first application—Continuation of proceedings—See ACT II OF 1901 (N. W. P. TENANCY) No. 30, A. W. N. (1906), 97.

(6) The time spent in review can be deducted in calculating time for appeal—See CIV. PRO. CODE, No. 261, 38 P.L.R. 1906.

(7) Withdrawal of appeal—Limitation when begins to run for execution of original decree—See EXECUTION OF DECREE, No. 11, 1 M.L.T. 238.

(8) Civ. Pro. Code, S. 810 A—Deposit of money more than thirty days after sale but on the day of re-opening of Court after vacation—whether deposit in time or not—See CIV. PRO. CODE, No. 176, 9 O.C. 214.

(9) Erroneous finding of Court as to bar by, when precludes revision—See ACT XIII OF 1884 (PUNJAB COURTS), No. 3, 118 P. R. 1906.

Limitation.—(Continued).

(10) Suit for value of share of produce due from tenant—Suit brought more than three years after the date when rent was due by custom, but within three years of tendering PATTAS—See ACT VIII OF 1865 (RENT RECOVERY, MADRAS), No. 6, 1 M. L. T. 315.

(11) Meaning of "on demand"—See CONSTRUCTION (OF DEEDS), No. 6, 16 M.L.J. 364.

(12) Special rule of, under the Bengal Tenancy Act, to be followed to the exclusion of the more general under the Limitation Act—See ACT VIII OF 1885 (BENGAL TENANCY), No. 72, 4 C. L.J. 553.

(13) Under S. 3 (5) of the Bengal Tenancy Act, for suit by land-lord for recovery of drainage charges—See ACT VI OF 1880 (BENGAL DRAINAGE), No. 1, 11 C.W.N. 57.

(14) Court adding a new defendant *proprio motu*—Plea of limitation.—See CIV. PRO. CODE, No. 42, 8 Bom. L. R. 942.

(15)—for application for withdrawal of money deposited in execution under a mistaken belief of liability, from which date runs—See EXECUTION OF DECREES, No. 2, 3 A.L.J. 667.

(16) Formal delivery, of possession to auction purchaser, effect of, as regards limitation, as against his co-sharer's right to possession—See SALE IN EXECUTION, No. 1, 3 A.L.J. 659.

(17) The mere fact that a greater sum is claimed as due in the certificate under Act I of 1895 [Public Demands Recovery, (B.C.)], than what is really due does not make the certificate and notice bad; nor does it prevent the running of time against the debtor provided the notice is duly served—See ACT I OF 1895 (BENGAL), No. 2, 1 C.L.J. 538.

(18) *Different periods of, for suit to set aside a decree for fraud and a suit for a declaration that a decree is not binding on Tarwad.*

To a suit to set aside a decree on the ground of fraud, Art. 77 of the Limitation Regulation (Travancore) applies and period allowed is three years from when the fraud became known to the party wronged. But a suit for a declaration that a decree obtained against a *Karnavan* is not binding on the *Tarwad*, since the debt which was the basis of the suit in which the decree was passed was not binding on the *Tarwad* properties, would not be covered by the said article but would come within the six years' rule in respect of declaratory de-

Limitation.—(Concluded).

crees. *Mundan Ramad v. Ramasubba Aiyar Kulathoor Aiyar*, 21 T.L.R. 41.

SADASIYA, AIYAR, C.J., PADMANABHA AIYAR and RAMACHANDRA ROW, JJ.

References.—10 C. 525, 16 M. 294, 26 M. 410 and 27 M. 243, R.

(19) *Period of, for applying to set aside a sale under S. 307 A, Civ. Pro. Code (Travancore), exclusion of the day of the sale in computing—The word 'from', meaning of.*

The question in this case was whether the application of the defendant to have an auction sale set aside, under S. 307 A, was within time or barred by limitation. In reckoning the thirty days from the date of the sale, it appeared that, if the date of the sale was excluded, the application was within time, but if included in the calculation, it was barred by time. *Held*, under S. 12 of the Limitation Regulation, the day, from which limitation has to be reckoned has to be excluded, even though that section is applicable only to suits, appeals or applications specified in the Regulation.

Held, also, in the ordinary use of the word "from", it is used sometimes to, include and sometimes exclude the date or period to which it refers, but, in legal phraseology, it imports exclusion and not inclusion and, an Act of Limitation being restrictive of the ordinary right to take legal proceedings, must, when the language is ambiguous, be construed strictly *i. e.* in favour of the right to proceed. *Rairan Rama Kaimal v. Sankaran Krishnan*, 21 T.L.R. 196.

PADMANABHA AIYAR & EAPEN, JJ.

References.—1 T.L.R. 76 & 1 B. 19, R.

See, also, I, 600-603; Act VI of 1882 (Companies), No. 2; Act I of 1895 (Bengal), Nos. 2 and 4; Act III of 1899 (Bengal), No. 1; Act II of 1901 (N.W.P. Tenancy), No. 5; *Adverse Possession*, No. 2; *Civil Pro. Code* Nos. 69, 93, 109; *Court Fees Act*, No. 9; *Execution of Decree*, Nos. 37 and 83; *Landlord and Tenant*, No. 16; *Limitation Act*, Nos. 12 and 16; *Mahomedan Law (Wakf)*, No. 1, *Pre-emption*, Nos. 40 and 41; *Rent Recovery Act (VIII of 1865)*, Madras, No. 3.

Limitation Act (XIV of 1859).

See, I, Regulation II of 1803, No. 1.

S. 1, cl. 18—See I, Limitation Act (XV of 1877), No. 112.

(1) *Ss. 1 (15) and 18—Mortgage—Suit for redemption—Limitation.* *

The plaintiff instituted, on the 7th of June, 1899, a suit for redemption of an alleged usufructuary mortgage executed on the 14th of August, 1781, for a term of 70 years. *Held*, that the suit was barred by limitation under S. 1 (15) and S. XVIII of Act No. XIV of 1859. **Muhammad Akbar Husain Khan v. Izzat-un-nissa**, A.W.N. (1906), 23=8 A.L.J. 113=28 A. 338.

STANLEY, C.J. and BURKITT, J. •

References.—13 B. L. R. 177 and 27 I.A. 153, R.

(2) *S. 18—See No. 1, supra.*

Limitation Act (XV of 1877).

(1) Where an imperative duty is cast upon Courts to do certain matters the—does not govern applications in respect of such matters—*See ACT III OF 1876 (BOMBAY MAMLATDARS)*, No. 6, 8 Bom. L.R. 218.

(2) *S. 2 and Sch. II, Arts. 118, 144—Suit for possession by heir against alleged adopted son—Adoption, proved invalid—Limitation—Res judicata—decision of issue improperly raised after remand—Civ. Pro. Code, Act XIV of 1882, S. 13.*

The immunity, such as it is, gained by the lapse of twelve years after the date of an apparent adoption, does not amount to acquisition of title, within the meaning of S. 2 of the present Limitation Act.

Where, after a remand by a higher Court, an issue was raised and accepted by the parties, and the decision thereon became final owing to the abandonment of an appeal.

Quære—Whether the decision was *res judicata* in a subsequent suit, notwithstanding that the raising of the issue on remand in the previous suit might have been open to objection. **Thakur Tirbhuwan Bahadur Singh v. Raja Rameshar Bakhsh Singh**, 10 C. W. N. 1065 (P.C.)=8 Bom. L.R. 722=16 M.L.J. 440=8 A.L.J. 695=4 C.L.J. 405=1 M.L.T. 265=9 O. C. 377=28 A. 727.

LORD MACNAGHTEN, SIR ANDREW SCOBLE, SIR ARTHUR WILSON and SIR ALFRED WILLS.

References.—13 I. A. 91=13 C. 303, R.

Limitation Act (XV of 1877).—(Continued).

S. 3—See I, 603, No. 1.

(3) *S. 4.—Dismissal of application for leave to appeal in forma pauperis—subsequent presentation of appeal memorandum on stamp—limitation.*

An application for leave to appeal in *forma pauperis* having been dismissed as being out of time, the appellant subsequently put in a properly stamped memorandum of appeal, after the 90 days allowed usually for filing a regular appeal. The questions for decision were, whether the appeal was in time and whether the stamped memorandum of appeal related back to the date of the application to appeal in *forma pauperis*. Both questions were decided in the negative. **Ganatha Singh v. Arar Singh**, 78 P.R. 1906=150 P.L.R. 1906.

ROBERTSON and CHITTY, JJ.

References.—13 A. 805, F., 22 B. 849, R. 11 A. 241 (P.C.); 17 C. 427 and 15 M. 78, D *See, also, I, 603, No. 2; and Civil Pro. Code, No. 66.*

(4) *Ss. 4 and 14—Pre-emption—Plaint returned for presentation to proper Court—Valuation—Jurisdiction—Civil Procedure Code.*

A suit for pre-emption arising out of a sale transaction, dated the 8th October, 1901, was instituted in the Court of the Subordinate Judge on the 15th September, 1902. The valuation of the suit was stated in the plaint to exceed Rs. 1,000. The plaintiff subsequently put in an application for amendment, on the ground that the subject-matter of the suit was less than Rs. 1,000, and, the valuation having been corrected accordingly, the plaint was returned on the 18th March, 1903, for presentation to the Court of the Munsiff, and the plaint was presented to that Court on the 19th March, 1903. The Munsiff tried the suit and having found that the subject-matter was more than Rs. 1,000 and that the amount had been fraudulently understated by the plaintiff, he dismissed the suit as barred by limitation. On appeal, the order of dismissal was set aside and the Munsiff was ordered to again return the plaint for presentation to the proper Court. The plaint was returned and, after the valuation had been corrected to exceed Rs. 1,000, the plaint was again presented to the Court of the Subordinate Judge on the 1st July, 1904.

Held, that the suit was barred by limitation, and, S. 14 of the Limitation Act not being ap-

Limitation (Act XV of 1877).—(Continued).

pliable, the plaintiff was not entitled to deduct the time during which the plaint remained in the wrong Court. When a Court returns a plaint as being beyond its jurisdiction, it cannot be said that the suit has been legally instituted. A suit can only be said to be instituted when the plaint is presented to the proper officer of the Court, which has jurisdiction to try the suit (a). *Basant Singh v. Bijal Singh*, 9 O. C. 1.

WELLS and RYVES, J. *cd.*

References.—(a) 19 B. 323, R., 16 W.R. 47, Diss.

(6) *S. 5—Limitation—Appeal not presented within time*—"Sufficient cause"—*Appellant misled by his legal adviser as to course to be followed.*

Held, that, when a client *bona fide* accepts the advice of counsel as to the proper procedure to adopt in the course of litigation and misled, by that advice, fails to file an appeal within time, he is entitled to the benefit of S. 5 of the Act, 1877. *Kura Mal v. Ram Nath*, A. W. N. (1906), 87 = 8 A. L. J. 218 = 28 A. 414.

STANLEY, C.J. and BANERJI, J.

Reference.—A. W. N. (1908), 82, F.

(6) *S. 5—Time, extension of, to file appeal—Time, exclusion of, during which review filed—Sufficient ground for review, what amounts to—Inflexible rule, if possible—Due diligence—Laches—Civ. Pro. Code (Act XIV of 1882), Ss. 623, 624, 626—Sufficient cause for not presenting appeal in time—Review, admission of—Notice, issue of—Discretion of Court, if fettered.*

Per RAMPINI, J.—The general rule for extending the time to prefer an appeal and for excluding the time taken up in prosecuting an application for review is, that the delay may be excused if the applicant can shew, that he had reasonable grounds for applying for a review instead of preferring an appeal (a).

Per MOOKERJEE, J.—The general rule deducible from judicial decisions is that a *bona fide* application for review of judgment presented and prosecuted with due diligence should, except in special cases, be regarded as a sufficient cause for not presenting an appeal within the prescribed period (b).

The principle above laid down is a valuable guide in indicating the manner in which the judicial discretion of Courts is to be exercised,

Limitation (Act XV of 1877).—(Continued):

but it does not embody an inflexible rule of law which fettered the exercise of that discretion in any particular case.

What is a "sufficient cause" in the section meaning of S. 5, cl. (2) of the Limitation Act must depend upon all the circumstances of each particular case.

The words "sufficient cause" with the section ought to receive a liberal construction so as to advance substantial justice, where no negligence or inaction or want of good faith is imputable to the appellant (c). *Gobinda Lal Das v. Shikadas Chatterjee*, 3 C.L.J. 545 = 10 C.W.N. 986 = 33 C. 1323.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 15 C. 242, 18 B. 84, R. (b) B L.R. Sup. Vol. 349 = 2 W.R. Mis. 35, B.L.R. Sup. Vol. 728 = 7 W.R. 529, 15 W.R. 61, 22 W. R. 79, 188 P.R. 1888, (1893-1900), L.B.R. 515, 7 M. 584, R., 15 C. 242, 14 M. 81, 18 B. 84, explained and D. (c) 18 M. 269 and 4 O. C. 372, R.

(7) *S. 5—Decree—Amendment of—Civ. Pro. Code (Act XIV of 1882), S. 206—Appeal.*

Where the plaintiff obtained a decree in a mortgage suit on the 31st January, 1901, which was made absolute on the 28th September following, and the decree was subsequently amended under S. 206, Civ. Pro. Code, on the 12th July, 1902, and the plaintiff preferred an appeal to the High Court against the amended decree.

Held, that for the purpose of determining whether the appeal was barred by limitation, time must be taken to have run from the date of the decree as originally drawn up (a).

Every amendment made in a decree under S. 206, Civ. Pro. Code, does not necessarily entitle a party, who performs an appeal against the decree, to claim an extension of time under the second paragraph of S. 5 of the Limitation Act; whether there is sufficient cause for such extension must depend upon the circumstances of each individual case. If the amendment has no relation to the grounds upon which the validity of the decree is sought to be challenged in appeal, such appeal should not be admitted out of time. On the other hand, if the grounds on which the appeal is based are intimately connected with the amendment of the decree, or if the grounds are directed against the decree, only in so far as it has been amended, the Court

Limitation Act (XV of 1877).—(Continued).

should exercise in his favour the discretion vested in it by para. 2 of S. 5 of the Limitation Act (5). *Braro Lal Rai Chowdhury v. Tara Prasanna Bhattacharji*, 8 C.L.J. 168.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 14 M. 150, 6 C. 22, 22 M. 364, F. (b) 53 C. 808, 21 C. 259, R.

(8) *S. 5.—Practice—Admission of appeal after the prescribed time.*

When the time for appealing is once passed, a very valuable right is secured to the successful litigant; and the Court must, therefore, be fully satisfied of the justice of the grounds on which it is sought to obtain an extension of the time for attacking the decree, and thus perhaps depriving the successful litigant of the advantages which he has obtained. *Karsondas Dharamsey v. Gungabal*, 7 Bom. L.R. 965=30 B. 329.

JENKINS, C.J. and BATTY, J.

(9) *S. 5—Delay—Excuse of delay—Discretion of Court—Interference in appeal.*

On the 25th February 1899, an order was passed by a Subordinate Judge in execution proceedings. Instead of appealing from that order, the party aggrieved filed a suit on the 24th February, 1900, in which it was decided, on the 30th September, 1903, by the District Judge in first appeal, that the suit was barred. by S. 244 of the Civ. Pro. Code. It was not till the 4th January, 1904, that an appeal from the order of 25th February, 1899 was preferred. The District Judge decided that there was no sufficient reason for not presenting the appeal in time and dismissed the appeal:

Held, that, having regard to the delay, which occurred in presenting this appeal between the 30th September, 1903, and the 4th January, 1904, it was not open to the appellant to contend that the District Court exercised its discretion in a capricious or arbitrary manner. *Bhimrao Ramrao v. Ayyappa Yellappa*, 8 Bom. L.R. 858.

ASTON & HEATON, JJ.

References.—17 B. 49, 23 B. 513, 6 B. 304 & 7 Bom. L.R. 965, R.

S. 5—See, also, I, 604, No. 4.

(10) *Ss. 5, 6—Applicability of, to suit brought under Registration Act, S. 77—See REGISTRATION ACT, No. 81, A.W.N. (1905), 175.*

(11) *Ss. 3 and 18—Civil Procedure Code, S. 536—Application for leave to appeal to his Majesty in Council—Limitation—*

Limitation Act (XV of 1877).—(Continued).

Held, that neither S. 5 nor S. 12 of the Indian Limitation Act, 1877, applies to applications under S. 536 of the Code of Civil Procedure for leave to appeal to His Majesty in Council. *Bhish Singh v. Gandharp Singh*, A. W. N. (1906), 55=3 A.L.J. 165=28 A. 391.

STANLEY, C. J. and BURKITT, J.

References.—1 A. 644; 15 A. 14; 19 B. 301; 15 M. 159, F.

S. 5, Art. 158—See I, 604, No. 6.

(12) *S. 5 and Art. 178—Application for review—Sufficient cause for not making the application within time—See ACT XVI of 1887 (PUNJAB TENANCY), No. 13, 9 P.R. 1905 (Rev).*

(13) *S. 6—See REGISTRATION ACT (III of 1877), No. 81, A.W.N. (1905), 175.*

(14) *S. 7—Disability of some of joint judgment-creditors when time began to run for applying for execution of decree—Minority.*

In the matter of an application under S. 89 of the Transfer of Property Act, it was held that S. 7 of the Limitation Act applied, whether all or some only of the joint judgment-creditors were under disability, when time began to run. *Nawab Ibn Husain Khan v. Munir Ahmad*, 9 O.C. 269 (B).

CHAMBER and GRIFFIN, J. CS.

References.—13 M. 236, 25 M. 431, 28 M. 359, *Refd. to*; 28 C. 465, 20 B. 383, 22 A. 19 A.W.N. (1904), 163 and 3 O.C. 316, F.

S. 7—See, also, I, Nos. 8, 9, 10, 11, 12; and Civil Pro. Code, No. 225.

Ss. 7, 8 and Art. 21—See I, 607, No. 14.

(15) *Ss. 7, 8 and Sch. II, Art. 179—Execution of decree—Limitation—Insanity of decree-holder.*

Held, that the insanity of the decree-holder, which began after passing of the decree, did not save limitation which had commenced to run.

The release of the judgment debtor for failure to deposit subsistence-money cannot serve as a starting point of limitation. *Aya Singh v. Gardial*, 72 P.L.R. 1906.

CHATTERJI, J.

Ss. 7 and 9—See I, Execution of Decree, No. 85.

Ss. 7, 9 and Sch. II, Arts. 142, 144—See I, 698, No. 16.

Ss. 7, 9 and Art. 179 (4)—See I, 608, No. 17.

Limitation Act (XV of 1877).—(Continued).

Ss. 7, 17 and Art. 40—See, I, 608, No. 17.

Ss. 7 and 17 and Art. 106—See I, 609, No. 19.

(16) S. 8—See No. 15, *supra*.

S. 8—See, also, I, 610, No. 20; and 607, No. 14.

S. 9—See, I, Nos. 15, 16 & 17.

(17) S. 10.

Under S. 10 of the Act, time is no bar to an action against the trustee himself, his representatives or assigns, except an assign for valuable consideration, but as regards the latter the period of 12 years from the date of the purchase is to be the period within which the suit must be brought. **Shyama Charan Nundy v. Abhiram Goswami**, 3 C.L.J. 306=10 C.W. N. 738=33 C. 511.

MACLEAN, C.J., and GEIDT, J.

Reference.—2 C.L.J. 546, R.

(18) S. 10—Trust for a specific purpose—Express trust—Resulting trust—Indian Trusts Act (II of 1882), Ss. 81, 83.

S. 10 of the Limitation Act 1877, does not apply to a resulting trust in favour of the settler, which arises by the operation of Ss. 81 and 83 of the Indian Trusts Act, 1882, on the ground that the object of the original trust is uncertain or undiscoverable.

Whether the resulting trust flows from the invalidity of the declared trust or from the impossibility of ascertaining the declared trust, it is equally a substituted trust, that is, a trust which is created by the law *forte de mieux*, that is, as the best arrangement which the law regards as possible in difficult circumstances. This general rule is affected to this extent only, that where there is a trust covering the whole estate, and the bequests do not exhaust the whole estate, the trustees are express trustees of the residue for the heir of the testator. **Mathuradas Damodardas v. Vandrawandas Soonderji**, 8 Bom. L.R. 328.

BATCHELOR, J.

S. 10—See, also, I, 610-611, Nos. 21, 22, 23; and *Mahomedan Law (Gift)*, No. 1.

S. 10 and Art. 48—See I, 612, No. 24.

(19) S. 12—See No. 11, *supra*.

(20) S. 12—"Time requisite for obtaining a copy"—

The words "the time requisite for obtaining a copy" in the second and third paragraphs of S. 12 of the Limitation Act are not confined to cases where the person appealing has in person

Limitation Act (XV of 1877).—(Continued).

or by a properly authorised agent applied for a copy of a judgment or decree. **Kashi Bai v. Ram Kishan Shastari**, A.W.N. (1906), 228.

KNOX, J.

S. 12.—See, also, I, 613, Nos. 25 & 26.

S. 12 and Art. 156—See I, 614, No. 27.

(21) S. 14—See Nos. 4, *supra* and 28, *infra*.

S. 14—See, also, I, 614-615, Nos. 28, 28-a and *Res Judicata*, No. 29.

S. 17—See, I, Nos. 18 and 19.

(22) S. 19—Applicability of, to applications, for execution of rent decrees—Bengal Tenancy Act (VIII of 1885), Sch. III, Art. 6, S. 185, sub-s. 2, effect of—Acknowledgment of liability, saves limitation of application for execution of rent decrees not exceeding Rs. 500.

S. 19 of the Limitation Act is applicable to applications for execution of rent decrees, coming under Art. 6 of Sch. III of the Bengal Tenancy Act by reason of sub-section 2 of S. 185 of that Act.

S. 19 of the Limitation Act applies to applications for execution of decrees and an acknowledgment of liability under that section can save an application for execution of a decree for arrears of rent for a sum of money not exceeding Rs. 500 from being barred by limitation. **Rakhal Chandra Tewari v. Hemangini Debi**. 3 C.L.J. 347.

BAKERJEE and GEIDT, JJ.

References.—8 C. 716 and 9 C. 780, *Appl.*

(23) S. 19—In a conveyance executed by a mortgagor in respect of a portion of the mortgaged properties in favour of a stranger there was a recital admitting the mortgagor's liability on account of the mortgage-debt.

Held, that not being addressed to any person and not having been communicated to the creditors or any person on their behalf, it was not an acknowledgment within the meaning of S. 19 of the Act.

What is a sufficient acknowledgment within the meaning of that section, considered (a). **Inam Ali v. Baij Nath Ram Sahu**, 10 C.W. N. 551=8 C. L. J. 576=33 C. 618.

MACLEAN, C. J. and MOOKERJEE, J.

References.—(a) L.R. 14 I.A. 168=14 C.801, F., L.R. 25 I.A. 35=25 C. 844, 6 B.L.R.299, R.

Limitation Act (XV of 1877).—(Continued).

- (24) *S. 19—Acknowledgment by a person who, when he made it, had no right to the property.*

Section 19 of the Act does not require that the person making an acknowledgment should have an interest in the property, in respect of which the acknowledgment was made, at the time when the acknowledgment was given. It is sufficient if, before the period of limitation expires, an acknowledgment of liability or right has been made in writing by the person, against whom the right is claimed. **Jugal Kishore v. Fakhr-Ud-Din**, 3 A. L. J. 690 = A. W. N. (1906), 296.

STANLEY, C.J. and RUSTOMJEE, J.

Reference:—1 C.W.N. 509, R.

- (25) *S. 19—Acknowledgment of conditional liability.*

Where there is no charge against immovable property, in respect of payments sought to be enforced in a suit, the period of limitation applicable is six years and a suit, instituted, more than six years after the plaintiff made such payments, is barred, unless there is an acknowledgment within the meaning of S. 19 of the Act. But, there cannot be an acknowledgment of a conditional liability, unless the condition is fulfilled. Though, so far as the specific cases provided for in the explanation to S. 19 are concerned, the Indian Law is not the same as the English Law, yet, there can be no doubt that, here as well as in England, an acknowledgment of a conditional liability would not give a fresh start, so long as the condition remains unfulfilled. **Rajah Kavali Arunachella Row v. Sri Raja Rangiah Appa Row**, 1 M.L.T. 318 = 16 M.L.J. 563 = 29 M. 519.

SUBRAHMANIYA IYER and BENSON, JJ.

Reference:—1 M.L.T. 199 (P.G.), F.

- (26) *S. 19—See CONTRACT ACT, No. 18, 22 P.L.R. 1906.*

- (27) *S.—19—Limitation—Acknowledgment—Accounts, open and current—Findings of fact—Practice.*

The plaintiff's father and the defendant had money dealings with one another from July 1895 to May 1898, and at the close of these dealings, the latter owed a large sum of money to the former. The plaintiff's father died in October 1898, leaving a will, by which the defendant and four other persons were appointed trustees to administer the estate. In course of

Limitation Act (XV of 1877).—(Continued).

the litigation arising out of application for the probate of the said will, the defendant, on the 26th September, 1899 filed a petition to the Probate Court, of which the third paragraph is as follows: The applicant *Rub Chand* (the present defendant) is a big *mahajan* of Burhanpore, paying Rs. 106 as income-tax. For the last five years, he had open and current accounts with the deceased. The alleged indebtedness does not affect his right to apply for probate."

The present suit was brought on the 5th September, 1901, to recover the amounts due from the defendant.

Held, that the aforesaid statement was an acknowledgment of liability within the meaning of S. 19 of the Act, and that the suit was therefore not barred by limitation. There was a clear admission made by the defendant that there were open and current accounts between the parties at the death of the plaintiff's father. The legal consequence would be that, at that date, either of them had a right as against the other to an account and that whoever on the account should be shown to be the debtor of the other, was bound to pay his debt to the other. The inevitable deduction from this admission, therefore, was that the defendant acknowledged his liability to pay his debt to the plaintiff's father or his representative, if the balance should be ascertained to be against him.

An acknowledgment, in order to take the case out of the Statute of Limitation, must be either one from which an absolute promise to pay can be inferred, or secondly, an unconditional promise to pay the specific debt, or thirdly, there must be a conditional promise to pay the debt, and evidence that the condition has been performed (a).

S. 19 says nothing about a promise to pay, and requires only a definite admission of liability, as to which there can be no reason for departing from the English principle that an unqualified admission and an admission qualified by a condition which is fulfilled, stand upon precisely the same footing (b). **Mani Ram v. Seth Rup Chand**, 4 C.L.J. 94 (P.G.) = 8 Bom. L.R. 501 = 10 C.W.N. 874 = 1 M.L.T. 199 = 3 A.L.J. 525 = 16 M.L.J. 300 = 33 C. 1047 = 2 N.L.R. 180.

LORD MACNAGHTEN, SIR ANDREW SCOBLE, SIR ARTHUR WILSON and SIR ALFRED WILLS.

Limitation Act (XV of 1877).—(Continued).

References.—(a) (1871) 6 Ch. App. 892, 898, P. (b) (1854) 1 Kay 678 and (1890) L. R. 18 Ch. D. 254, R.

S. 19—See, also, I, 615, No. 30; and Act VIII of 1885 (Bengal Tenancy), No. 47.

(28) **Ss. 19 and 14—Acknowledgment by Receiver—Receiver, if agent—Admission—Estoppel—Bona fide prosecution of claim in administration suit—Claimant directed to institute fresh suit—Limitation—Exclusion of time.**

A Receiver appointed in an administration suit, instituted by a creditor of a deceased, against his executor, is not an agent of the executor, within the meaning of S. 19. He is the agent and an officer of the Court.

But, when, in such a suit, another creditor of the estate applied to rank as such, and the Receiver submitted a statement in the presence of the executor, admitting the debt due to the applicant, but the Court, after some time, directed the applicant to bring a fresh suit; and, on the suit being instituted, he was met with the plea that the claim was barred by limitation.

Held—That, in the face of the admission made in his presence, the executor was estopped from setting up to the Statute of Limitation as a bar.

That, in any case, S. 14 of the Act applied and the time, during which the plaintiff was *bona fide* prosecuting his claim in the administration suit, should be excluded in computing the period of limitation. **Baij Nath Ram Goenka v. Hem Chunder Bose**, 10 C.W.N. 959.

MACLEAN, C.J., and GRIDT, J.

Ss. 19, 20 and 21—See I, 616, No. 33, and Execution of Decree, No. 56.

Ss. 19, 20 and Art. 179—See I, 616, No. 34.

(39) **S. 20—Enjoyment of debtor's land in lieu of interest due.**

Under an agreement that plaintiff was to take possession and enjoy the produce of certain land of the defendants in lieu of the interest due by them under a pro-note in his favour, plaintiff continued to enjoy the produce thereof for a number of years. **Held**, that plaintiff's enjoyment of the land in lieu of interest, was payment to him of interest, under the pro-note, sufficient to satisfy the requirements

Limitation Act (XV of 1877).—(Continued).

of S. 20 of the Act. Such a payment by the creditor need not be in money but may be in goods, or even by a settlement of accounts but the payment must always be, as in the present case, of such a nature that it would be a complete answer to a suit brought against the debtor to recover the amount. **Mytan v. Annavi Madan**, 16 M.L.J. 99=20 M. 294.

BENSON and MOORE, JJ.

References.—19 M. 840 (842), F. 24 B. 493 and 24 B. 619, R.

(80) **S. 20—Payment of interest as such—Interest—Settlement of accounts.**

In a suit brought by the plaintiff for a balance of book debts, it was found that, within three years before the institution of suit, accounts were settled between the parties and the interest was calculated upon the sums then found due to the plaintiff, and the amount so found was added on to the principal and thereafter the whole amount was treated as principal. The defendant contended that the payment of interest, not being in cash, was not such as could operate as a valid payment to save limitation under S. 20 of the Act.

Held, that, where the interest was not paid in cash, but, on a settlement of accounts, the amount of interest calculated up-to-date was added on to the principal, and the aggregate amount was thenceforward treated as principal, there had been a payment of interest, *as such*, sufficient to satisfy the requirements of S. 20 of the Act. **Mohan Lal v. Lachman Dass Kunj Behari Lal**, 9 O. C. 221.

CHAMBER, J.C.

References.—24 B. 493, F., 18 B. 338 and 19 M. 840, R.

(81) **S. 20—Account books—Balance Struck—Interest—Acknowledgment.**

An entry, in a creditor's book, of a balance due for principal and interest, or even a verbal assent to such balance, cannot be treated as a payment of interest as such for the purposes of S. 20 of the Act. **Prag Das v. Baldeo Farshad**, A. W. N. (1906), 212.

STANLEY, C. J. and KNOX, J.

Reference.—24 B. 498, D.

(82) **S. 20—Part payment—Mortgage debt—Equity of redemption, transfer of—Part payment by mortgagor after transfer—Extension of period as against transferee.**

Limitation Act (XX of 1877).—(Continued).

Payment of a part of the mortgage-debt by the mortgagor, and appearing in his handwriting, will give a fresh start of limitation to the mortgagee even as against a person who had purchased a portion of the mortgaged property prior to such payment (a). **Domi Lal Sahu v. Ekham Dubey**, 11 C.W.N. 107=38 C. 278.

MACLEAN, C.J., and HOLMWOOD, J.

References.—(a) 9 C.W.N. 868=32 C. 1077, F., 88 Ch. Div. 127 (1886), R.

(33) S. 30—See EXECUTION OF DECREE, No. 4, A.W.N. (1905), 268.

S. 30—See also, I, Nos. 33, 34; and *Execution of Decree*, No. 77.

S. 30, Sch. II, Art 179—See, I, 617, No. 36.

S. 31—See I, No. 33.

(34) S. 22—

After commencing a suit on his mortgage, the mortgagee applied for adding as defendant an assignee of a portion of the mortgaged properties and the latter was ordered by the Court to be so added on a date when the period of limitation for bringing the suit had expired.

Held, that the suit, so far as this defendant was concerned, was barred but the plaintiff was entitled to succeed in respect of a proportionate part of his claim as against the remaining owners of the equity of redemption, who had been made parties within time (a). **Imam Ali v. Baij Nath Ram Sahu**, 10 C.W.N. 551=3 C.L.J. 576=38 C. 613.

MACLEAN, C.J. and MOOKERJEE, J.

References.—(a) 24 C. 640, 27 C. 540, *D and doubted*; 12 C. 642, R., 28 B. 11, *Appr.* 6 C. 815, 14 C. 791, D.

(35) S. 22—Power of appellate Court to add parties—Adding of respondents—*Cir. Pro. Code*, S. 559.

There is nothing in the Limitation Act, which controls the powers of the Court, under S. 559 of the *Civ. Pro. Code*, in the matter of allowing to be added as respondents, persons who were not made respondents at the time when the appeal was presented; and it makes no difference whether the application so to add has been made by the appellant himself to bring in such persons as respondent, or the Court considers it necessary for the ends of justice and with a view to enable it to make an effectual order between all the parties concerned, that they should be added as respondents. **Girish Chan-**

Limitation Act (XX of 1877).—(Continued).

der Lahiri v. Sani Bakharewar Ray, 33 C. 320.

GHOSE and GRANT, JJ.

References.—9 C. 325 and 12 C. 642, R.

(36) S. 22—Suit by one of two brothers for money due to them jointly on account—addition of other brother as co-plaintiff after the period of limitation—

Two brothers, members of an undivided family, were entitled to recover a debt due to them jointly. One of them alone sued for the debt within the period of limitation. On objection raised by the defendant, the other brother was joined as a party to the suit. When the other brother was joined, however, the limitation prescribed for the suit had run out. *Held*, that, the original dealings having been with both the brothers, they were jointly entitled to sue and that, therefore, the whole suit was barred on account of addition of the other brother as a party to the suit, after the period of limitation. **Motan Mal v. Kripa Mal**, 79 P. R. 1906.

JOHNSTONE and BATTIGAN, JJ.

References.—60 P.R. 1906, F. 7 C. 780, *Dist.*

(37) S. 22—Joinder of minor plaintiff after expiry of time for bringing suit, effect of—

In this suit, instituted by the plaintiff, to recover the amount due to him under a mortgage bond, one of the defendants advanced, among other items of defence on the merits, the plea, that the suit was barred by time, by reason of the plaintiff's failure, to join a minor grandson of his as co-plaintiff and to implead a purchaser of a portion of the hypotheca as a defendant, before the expiry of the period of limitation prescribed for the suit. *Held*, the above plea of limitation could not be sustained, because, the mere fact of the joinder of the minor co-plaintiff, after the expiry of the time for bringing the suit, was not fatal to the suit (a). Nor could the omission to add a purchaser of a small portion of the mortgaged property as a party defendant, until the expiry of the said time, operate as a bar to the suit (b). **Thakurmani Singh v. Dai Rani Keerti**, 38 C. 1079.

BRETT AND GUPTA, JJ.

References.—(a) 28 B. 11, F. (b) 30 C. 755, R.

S. 22—See, also, I, 618-621, Nos. 37, 38, 39 and 40.

Limitation Act (XY of 1877).—(Continued).

(38) S. 23, Sch. II, Arts. 120, 144, 178—
Declaratory suit, limitation.

Held, (i) that Art. 178, Sch. II of the Limitation Act, prescribes the period of limitation applicable to an application for substitution, when, upon the death of one respondent, the right of appeal survives against the remaining respondents alone.

(ii) That the period of limitation applicable to a suit for declaration of title is six years from the date when the right to sue accrues under Art. 120, Sch. II of the Limitation Act (a). S. 23 of the limitation Act has no application to such a case (b). **Shyamanand Das v. Raj Narain Das**, 4 C.L.J. 568.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 1 C.L.J. 78, F. (b) 20 C. 906, D.

S. 26—*See*, I, 621, No. 41.

S. 28—*See* I, *Chaukidarai Chakran Lands*, No. 2.

Arts. 2, 29 and 36—*See*, I, 622, No. 43.

(39) Arts. 9, 91, 95—Suit to have a sale certificate set aside for fraud, applicability of the articles to—*See* CIV. PRO. CODE, No. 118, U.B. R. (1906), Civ. Pro. Code, 86.

(40) Art. 10—*Suit for pre-emption—Registration Act, 1877, Ss. 52, 58, 59 and 60—Date of registration, meaning of.*

Suit for pre-emption based on a sale-deed, executed on a certain date, presented for registration on the same date, but bearing the endorsement 'registered' on a subsequent date. The question for decision was whether the period of limitation, provided by Art. 10 of the Limitation Act, began to run on the date on which the document was presented for registration or on the date on which the document was actually registered, i.e., the date on which the endorsement 'registered' was made by the Registering Officer. *Held*, that time began to run from the date of registration, i.e., the date on which the endorsement 'registered' was made and, not from the date of the presentation for registration. **Bhanjan Ram v. Gopala Ram**, 92 P.R. 1906=126 P.L.R. 1906.

RAIP and LAL CHAND, JJ.

Reference.—10 P.R. 1881, F.

See, also, I, 623, No. 46; and 1 *Budhist Law*, No. 1.

Limitation Act (XY of 1877).—(Continued).

(41) Arts. 10 and 120, Sch. II—*Limitation—Suit for pre-emption—“Physical possession”—Right of pre-emption not a purely personal right.*

The term, "physical possession," as used in Art. 10 of the Second Schedule to the Act, 1877, cannot apply to property, which is in the possession of tenants. To a suit for pre-emption of such property, Art. 120 applies (a).

Held, also, that the right of pre-emption being a right incident to, or arising out of the ownership of, land, the successor in title of a person, in whose favour such right has arisen, is not debarred from suing to enforce it by the fact only that his predecessor has done so (b). **Kaunsilla Kunwar v. Gopal Prasad**, A.W.N. (1906), 78=3 A.L.J. 191=28 A. 424.

STANLEY, C.J. and BURKITT, J.

References.—(a) 24 A. 17, F. (b) 20 A. 148, F.

(42) Arts. 10, 120, Sch. II—*Right of pre-emption in respect of a mortgage by conditional sale, suit for enforcing, whether governed by Art. 10 or 120.*

Long after a mortgage by a conditional sale for a certain term, the present plaintiffs sued for enforcing their right of pre-emption, arising in relation to the mortgage, asserting themselves to be "bisradars in the village and co-sharers in the patti." The question of limitation for the suit was raised and argued in appeal on the assumption of the applicability of Art. 10 to the suit. *Held*, that Art. 10 was inapplicable to the case, since there was no registration of any deed of sale as such, but the article that could properly govern the suit was Art. 120 and the suit was within the six years prescribed for it, the period having to be counted from the expiry of the year of grace given under Regulation XVII of 1806 (a). **Shooji Singh v. Shooji Singh**, 199 P. R. 1906.

JOHNSTONE & HURRY, JJ.

Reference.—(a) 108 P.R. (1901) (F.B.) F. 97 P.R. 1880, 10 P.R. 1881 & 90 P.R. 1898, R.

See, also, I, 622, 623, Nos. 45 & 47.

Arts. 10, 143—*See* I, *Budhist Law*, No. 1.

(43) Art. 11—*Suit under S. 288, Civ. Pro. Code—Order made on investigation—See* CIV. PRO. CODE, No. 154, 16 M.L.J. 186.

See, also, I, 624, No. 50; and *Civil Pro. Code*, No. 178.

(44) Art. 12—*Suit to set aside sale—Suit for possession of immovable property.*

Limitation Act (XV of 1877).—(Continued).

The property in suit was sold by auction in execution of a decree. Pending confirmation of sale, the plaintiff purchased the property from the judgment-debtor, who paid the decree money in Court. The sale was then set aside and the property was released from attachment. On appeal, the sale was confirmed. The plaintiff, relying on the sale in his favour, sued the auction-purchaser for possession of the property.

Held, that Art. 12 of the Act applied to the suit. **Nagina Singh v. Puran Chand**, 4 P.L.R. 1906=11 P.R. 1906.

ROBERTSON and RATTIGAN, JJ.

See, also, I, 625, No. 53; and *Civil Pro. Code*, No. 175.

Art. 12 (b)—*See*, I, Act I of 1895 (Bengal), No. 1.

(45) Art. 14—*Estates Partition Act* (VIII of 1876, B. C.), S. 116—Order directing execution of lands from partition.

Suit for a declaration of the plaintiff's right to certain lands, for a direction that the Collector should proceed with their partition under the Estates Partition Act, and for possession to be given to the plaintiff and his co-sharers. It appeared that, in proceedings before the Collector under this Act, the Collector passed an order excluding the disputed lands from the partition and proceeded with the partition in respect of other lands. The question for decision was whether Art. 14, Sch. 2 of the Limitation Act, barred the suit, the same having been brought more than one year from the date of the Collector's order. *Held*, Art. 14 of the Act did not apply, because the Collector had no power, under S. 16 of Act VIII of 1876, to pass an order excluding the disputed lands from partition, that such order was *ultra vires* and consequently, a nullity, and that, therefore, Art. 14 was not applicable to the suit, and the suit was not barred. **Allmuddin v. Ishan Chandra Dey**, 83 C. 693.

RAMPINI and GEIDT, JJ.

References.—21 C. 626, 11 B. 429, 15 B. 424, and 82 C. 1107, F. 29 C. 367, *Distd.*

(46) Art. 14, Sch. II—*Suit to declare entry in the Record of Rights erroneous—Decree not produced—Recital in later decree produced, if evidence.*

A suit by a party whose objection, under S. 103 A, Bengal Tenancy Act, to an entry in the

Limitation Act (XV of 1877).—(Continued).

draft Record of Rights has been rejected by the Revenue Officer, for a declaration of his rights is not governed by Art. 14, Sch. II of the Limitation Act.

The order rejecting the objection under S. 103 A, Bengal Tenancy Act, having no finality is not an order of a Government officer within the meaning of Art. 14, Sch. II of the Limitation Act.

Semble—The recital of the purport of a previous decree, not produced, in a later one which has been produced, is evidence. **Ramgulum Singh v. Bishnu Pargash Narain Singh**, 11 C.W.N. 48.

MITRA and HOLMWOOD, JJ.

References.—80 C. 20, F. 28 C. 676, *R.*

Art. 14—*See, also*, I, 625, Nos. 54 & 56; and *Chaukidari Chakran Lands*, No. 2.

Art. 21—*See*, I, No. 14.

Art. 29—*See* I, No. 43.

(47) Art. 31, Sch. II applicability of, to suits against a Railway Company for non-delivery of goods.

Article 31 of the Act (as amended by Act X of 1899) was held to govern suits against a Railway Company for compensation for non-delivery of goods, whether the failure to deliver was tortious or was due to a breach of contract, and argument advanced as to the applicability of Art. 49 to this case was held untenable for the reason that there was no wrongful conversion by the Railway Company, since the course, which they adopted of selling the goods, was one expressly authorised by the Railway Act, 1890. **Moti Ram v. East Indian Railway Company**, 108 P.R. 1906 (F.B.).

CHATTERJI, KENSINGTON and CHITTY, JJ.

References.—19 B. 165 and 26 B. 562, F. 3 M. 107 & 240 and 12 C. 477, *Diss.*

(48) Art. 32—*Right of landlord to sue for mandatory injunction to pull down buildings erected by tenant—Inequitable conduct of landlord.*

The mere fact that the Limitation Act, unlike the English law, proscribes a period of limitation, even in respect of suits for obtaining equitable relief, does not entitle the plaintiff to obtain the relief, because the suit itself is not barred by limitation, if his conduct in the matter is otherwise such as to make it inequitable for the Court, in the exercise of its

Limitation Act (XV of 1877).—(Continued).

discretion, to grant him a mandatory injunction. **Sankaralingam Chettiar v. S. S. Rathi** (S.A.No. 959 of 1901, unreported; but noted in), 99 M.500.

SUBRAHMANTIA AIYAR & BASHYAM ANYANGAR, JJ.

Reference :—16 C. 252, followed.

Art. 35—See, I, 636, No. 58.

Art. 36—See I, No. 43.

Art. 40—See I, No. 18.

Arts. 44 & 144—See I, 636, No. 59.

Art. 48—See I, No. 24.

(48-a) *Art. 49—Movable property delivered to defendant under erroneous order of Magistrate—Suit to recover same by true owner—Limitation.*

When possession was taken by the Magistrate under a warrant, the property lapsed into legal custody, and that custody during its continuance must be held to be for the benefit of the owner (a). It follows that, when, under the erroneous order of the Magistrate, the defendant took possession of the paddy for his own purposes, he was guilty of a conversion which gave to the true owner (plaintiff) a cause of action. In such cases, time runs under Art. 49 for 3 years from the date when the property is wrongfully taken (b). **Ramaswamy Iyer v. Nuthusawmy Iyer**, 1 M.L.T. 397 = 16 M.L.J. 541.

SUBRAHMANTIA IYER, and MILLER, JJ.

References :—(a) 26 M. 410, P. (b) 7 B. 427, D.

Art. 49—See I, Mortgage (Miscellaneous), No. 19.

Arts. 49 & 116—See, I, Res Judicata, No. 17.

Art. 52—See I, 627, No. 62.

(49) *Arts. 57, 115, 120—Loan—Pledge—Limitation.*

A suit to recover the balance of money remaining due after the sale of the articles pledged as its security, is merely a suit for money lent; and the period of limitation applicable to such a suit is three years from the time the loan is made, under Art. 57. **Yellapa bin Parasharampa v. Desayappa bin Khalilapa**, 7 Bom. L.R. 739 = 30 B. 218.

JENKINS, C.J. and ASTON, J.

See, also, I, 627, No. 63.

(50) *Art. 58, Sch. II—Suit to recover the value of hundis given as a loan—Limitation—Terminus a quo.*

Limitation Act (XV of 1877).—(Continued).

Held, that the mere transfer of hundis for the purpose of making a loan of their value, when realized, does not amount to a loan until money has been realized by the transferee. **Komal Prasad v. Savitri Bibi**, A.W.N. (1905), 181 = 2 A.L.J. 372 = 28 A. 54.

STANLEY, C.J. and BURKITT, J.

Reference.—3 C.P.L.R. 300, *Refd. to.*

See, also, I, 627, No. 64.

(51) *Arts. 61 and 99—Suit for contribution by one of the defaulters on his purchase of the putni as a sale under Regulation VIII of 1819, period of limitation for—See REGULATION VIII OF 1819 (BENGAL), No. 7, 3 C.L.J. 93.*

(52) *Art. 62—See No. 76, infra.*

See, also, I, 628, No. 66.

Arts. 62, 120—see I, 628, No. 66.

(53) *Arts. 62, 120 and 131—Suit for arrears of Jaghir by grantee from Government.*

This was a suit for recovery of a certain sum of money as arrears of Jaghir payable annually by Government from the defendant, who claimed to receive it under a decree obtained by him against a former grantee. The plaintiff urged that Art. 131 applied. *Held*, that Art. 131 applies only to a suit to establish the plaintiff's right to a periodically recurring right, and that it does not apply to a suit for recovery of a specific sum of money as arrears. Having regard to the circumstances of the particular case, *held*, that Art. 120 and not Art. 62, of the Act governed the suit. **Dost Muhammad Khan v. Sohan Singh**, 83 P. R. 1906.

JOHNSTONE and RATTIGAN, JJ.

References.—10 M. 115, *Diss.* 146 P. R. 1882, 154 P. R. 1889, 108 P. R. 1901, *Dist.*

Arts. 66 to 68—See I, 629, No. 67. Arts. 66, 68 and 80—See I, 629, No. 68.

(54) *Art. 75—Bond payable by instalments—Default—Application under S. 90, Transfer of Property Act (IV of 1882)—*

Where a mortgage bond was payable by instalments, in default of any of which the creditor could enforce the whole bond and the instalments were not paid but no suit was brought within six years of default of payment of instalments, *held*, that the creditor was entitled to a decree under S. 90 of the Transfer of Property Act, if the proceeds of sale proved insufficient. *Held*, that the bond in question was a bond payable by instalments within the

Limitation Act (XV of 1877).—(Continued).

meaning of Art. 75 of the Limitation Act (XV of 1877). **Basant Lal v. Gopal Parshad**, 5 A.L.J. 468.

KNOX and ALKMAN, JJ.

Art. 80—See I, 829, No. 68.

Arts. 99 and 120—See I, 639, No. 69.

Arts. 89, 90 and 120—See I, 630, No. 70.

Arts. 89, 113 and 116—See I, 631, No. 71.

Arts. 89 and 120—See I, 631, No. 72.

Art. 90—See I, No. 70.

(55) *Art. 91—Hindu Widow—Alienation—Reversioner—Suit by reversioner to recover property.*

Where the plaintiff sues to recover possession of property from the defendant, who relies on an alienation in his favour made by the widow of a preceding owner, and the alienation is not justified by any necessity recognised by Hindu Law, it is not open to the defendant to rely on Art. 91 of the Act, as a bar to the suit. **Rakhmabai Pandurang v. Keshav Raghunath Bhise**, 8 Bom. L.R. 675.

JENKINS, C.J. and BRAMAN, J.

Reference.—32 C. 257, F.

(56) *Art. 91, Sch. II, Limitation for suit for properties comprised in a wakf, by persons not parties to it.*

When a wakfnama is invalid in Law, it is not incumbent upon persons not parties to it to get the same set aside before suing for the properties comprised in it. **Alamgir Khan v. Kamrunnessa Khanum**, 4 C. L. J. 442.

GHOSE and GEIDT, JJ.

(57) *Art. 91—Lease by guardian in excess of his powers—Sale by minor on attaining majority—Suit by purchaser from minor—Necessity to set aside the lease by guardian—See ACT VIII of 1890 (GUARDIANS AND WARDS), No. 13, A.W.N. (1905), 176=2 A.L.J. 507 and No. 89, supra.*

See, also, I, 631, 632, Nos. 73 and 75; and Guardians and Wards Act, No. 6.*

Arts. 91, 120, 135—See I, 632, No. 76.

(58) *Arts. 91 and 141—Sale by Hindu widow of her husband's property without legal necessity—Suit by reversioner after widow's death to recover possession of property sold—Applicability of—Second appeal, whether question of limitation can be raised for the first time in;*

Limitation Act (XV of 1877).—(Continued).

A suit was brought by a reversioner to recover possession of the property sold by the widow of the last owner. The only question, that came up for decision before the High Court, was whether Art. 91 or 141 applied to the suit. The contention that Art. 91 and not Art. 141 governed the suit, was urged for the first time in second appeal. The respondent objected that this contention could not be raised for the first time at such a late stage of the suit. *Held*, that the contention could be raised in second appeal and that the suit was governed by Art. 141 and not by Art. 91.

Per PARBITTER, J.—The contention raised is a pure question of law arising upon the facts which have been found; no fresh evidence is required for its decision such as to warrant the plaintiff in alleging that he would be prejudiced by its being raised.

A sale by a Hindu widow of her husband's property is void and not merely voidable, as in the case of a lease, upon the death of the widow. Consequently, it was not necessary that the plaintiff should sue to have them set aside (a). Therefore Art. 91 has no application to the suit.

* *Per WOODBOFFE, J.*—The question of limitation is one of law and the refusal of the appellant's pleader to urge the point, based, though it doubtless was, on the view that the law was too settled for argument was yet a mere admission of law, which, as such, is in no wise binding upon the appellant.

In a suit by a reversioner, like this, all that a plaintiff will have to do is to prove, unless it be admitted, that the property in suit belonged to the husband of the alienor, that the alienor is dead, that he is the next heir of the husband and that the defendant is in possession of the property. The plaintiff would then be entitled to a decree unless the defendant proves that the alienation was justified by legal necessity and so gave him an absolute title. In the case of an alienation by a Hindu widow without necessity, as in this case, the title passes *ipso facto* ceases upon the death of the widow unless assented to by the reversioner. Consequently, all alienations by a Hindu widow, whether by sale, gift, mortgage or lease, are equally voidable in the sense that they are good for the widow's life-time and may be the subject of ratification during her life-time or upon her death. In the present case, therefore, the sale need not be set aside before the plaintiff can recover possession

Limitation Act (XY of 1877).—(Continued).

of the property sold. There is no allegation of consent by the reversioner or the existence of any fact, which, unless displeased, will make the widow's alienation binding as against him and render it necessary to set aside such an alienation. Therefore, the suit is not governed by Art. 91 (b). **Harihar Ota v. Dasarathji Misra**, 9 C.W.N. 636 = 1 C.L.J. 408 = 33 C. 527.

PAROITER and WOODROFFE, JJ.

References.—(a) 8 C.W.N. 802, *F.* 7 C.W.N. 864 = 30 C. 990 and 25 C. 1, *Distd.* (b) 14 M. 26 *F.* 7 C.W.N. 864 = 30 C. 990, *Distd.* 8 C.W. N. 802; 25 C. 1; 5 C. 370; 16 M. 311, 315; 24 C. 77; 6 M.I.A. 393; 18 C. 308; 15 C. 58; 19 C. 629; 6 C.W.N. 863; 6 C.L.R. 12; 8 M.I.A. 500, 555 and 24 B. 260, 284, 285, *Refd. to.*

See, also, I, 633, No. 77.

Arts. 91, 141, 144—See I, 634, No. 78.

Arts. 91, 142 and 144—See I, Hindu Law (Reversioners), No. 17.

Arts. 91 and 144—See I, 635, No. 80.

Art. 93—See I, 636, No. 82.

(58-a) *Art. 95—See—No. 39, supra.*

(59) *Art. 95, Sch. II—Sebait—Suit to set aside decree—Fraud.*

When a *sebait* of *debutter* property sues to set aside, on the ground of fraud, a decree based on a mortgage executed by his predecessor, the rule of limitation applicable is that prescribed by Art. 95, Sch. II of the Limitation Act; if the suit is brought within three years of the appointment of the plaintiff as *sebait*, it is in time. **Rohini Kumar Panja v. Raghu Nath Das**, 4 C. L. J. 472.

MACLEAN, C.J., and MOOKERJEE, J.

See, also, I, 636, No. 83.

(60) *Arts. 96, 144—Partition—Suit for possession of immovable property when relief is prayed on the ground of mistake—Claim to re-partition.*

Held, that Art. 96 and not 144 of the Second Schedule of the Limitation Act is applicable to a suit for possession of immovable property when relief is prayed on the ground of mistake. It is immaterial whether the mistake was made by the plaintiff or by a third party (a).

Semble.—When, after partition is completely effected, it is discovered that the parties were under a mistake as to the property liable to be partitioned, a claim for re-partition is main-

Limitation Act (XY of 1877).—(Continued).

tainable (b). **Sultan Mahomed v. Alim Khan**, 3 P.L.R. 1906.

JOHNSTONE and LAL CHAND, JJ.

References.—(a) 6 M. 350, *R.* (b) 21 B. 333, *R.*

(61) *Art. 97, Sch. II—Suit on mortgage decreed in respect of part of consideration—failure of rest of consideration—second suit for personal decree—first decree—cause of action—date of decree.*

J obtained a mortgage from N. In the consideration was included a sum of Rs. 3,403 and odd which F, N's husband, owed to J and a sum advanced in cash to F. J brought a suit for sale upon his mortgage against N. The suit was dismissed by the High Court in respect to the two sums named above, on the ground that N did not understand the nature of the contract and did not take upon herself the liability as to these items. J then brought this suit for money against the heirs of F, more than three years after the debt had been contracted. *Held*, that the decree of the High Court holding that there was no binding contract between N and J, brought about a new state of things and imposed a new obligation on the debtor, who could no longer allege that he was absolved by the creditors being entitled to the land instead of the money, and that he became bound to pay that which he had retained in payment of his land, the date of the decree giving the date of the failure of an existing consideration within the meaning of Art. 97 of the Act. **Jamna Das v. Najm-ul-Nissa**, 3 A.L.J. 228 = A.W.N. (1906), 88.

STANLEY, C.J. and BURKITT, J.

Reference.—11 A. 49, *Appl.*

(62) *Art. 97—Suit for money paid on an existing consideration which afterwards fails—See EVIDENCE ACT, No. 18, 8 Bom. L.R. 283.*

(63) *Art. 97—See No. 76, infra.*

Arts. 97, 115, 116 and 120—See I, 637, No. 84.

(64) *Art. 99—See REGULATION VIII OF 1819 (BENGAL), No. 7, 3 C.L.J. 93 and No. 51, supra.*

(65) *Arts. 99 and 132—Suit for contribution—Annuity charged on land—Adverse possession—Interest.*

Where several properties are liable for the payment of an annuity, which has been discharged by the owner of one of such properties, a suit for contribution, being a suit to enforce

Limitation Act (XV of 1877).—(Continued).

payment of money charged upon land, is governed by article 182 and not by article 99 of the Second Schedule to the Limitation Act (a). The plaintiff's property had been sold in execution of the annuitant's decree on the 20th March, 1899. He derived his title from one L. G. who entered into possession on the decease of his alleged wife H. B. in the year 1867. In 1868 L. G. executed a mortgage in favour of the plaintiff's predecessors and the latter, after suing for sale, purchased the mortgaged property and entered into possession in 1878. Subsequently, in a suit brought by the plaintiff's predecessors for the redemption of a mortgage executed by H. B. in 1865, it was decided that this latter mortgage could not be redeemed, because H. B. was not the wife of L. G. and that nothing therefore passed to the mortgagees of the 1868 mortgage. In the present appeal, the plea was raised that the plaintiff acquired no charge over the appellants' property.

Held that the charge subsisted and, even if L. G. had no interest which he could pass to the plaintiff, the latter had acquired a good title by adverse possession. *Yakub Ali Khan v. Lala Kishun Lal*, A.W.N. (1906), 216=28 A. 748.

STANLEY, C.J. and BANERJI, J.

Reference.—(26) A. 227, F.

(66) Art. 106—*Partnership—Suit for balance of accounts*.

One of the partners of a firm died in November, 1890. The present suit was filed by the surviving partner in August, 1901. The plaintiff alleged that no accounts were settled, and sued defendants, heirs of the deceased partner, to make good their share of the losses incurred by the partnership.

Held, that the plaintiff must be deemed to have sued for balance due to him on a settlement of partnership accounts and that the suit was barred under Art. 106 of the Second Schedule of the Act. *Gujar Mal v. Amin Chand*, 78 P.L.R. 1906.

ROBERTSON and BATTIGAN, JJ.

See, also, I. Nos. 19 and 85.

Art. 109—*See I. 498, No. 86.*

(87) Arts. 109 and 120—*Wrongfully in possession*, meaning of—*Possession in execution of a decree subsequently set aside—Right to sue for mesne profits when accrues—Mesne profits, suit for.*

Limitation Act (XV of 1877).—(Continued).

Possession obtained under orders of a Court in proceedings in execution of a decree, although such proceedings are afterwards set aside on appeal as tainted with fraud, is not wrongful within the meaning of Art. 109. The word 'wrongfully' in the article means wrongfully in law.

Art. 120 applies to a suit for mesne profits of land held in such possession, and the plaintiff is within time if he brings his suit within six years from the date on which his right to sue accrued.

The right to sue in such a case accrued when the execution-proceedings in which the defendant obtained possession are set aside as fraudulent. The suit being in time, there is no law against the plaintiff recovering mesne profits for the whole period during which he was kept out of possession. *Holloway, F. H. v. Guneshwar Singh*, 3 C.L.J. 182.

HENDERSON and MITRA, JJ.

Art. 110—*See I. 638, No. 87.*

(68) Art. 111—*See No. 95, infra.*

(69) Arts. 111 & 132—*Vendor's charge on immovable property for unpaid balance of the price, suit to enforce.*

Held, that a suit by a vendor to recover the unpaid balance of the price of immovable property by sale of the property is governed not by Art. 111 but by Art. 132, Sch. ii of the Act. *Syed Talib Hussain v. Ram Charan*, 9 O.C. 284.

CHAMIER, J.C.

References:—18 B. 48, 22 B. 846 & 21 A. 454, F., 21 M. 141 & 24 M. 233, *Diss.*, 31 C. 57 (P.G.) & 5 De. G.M. and G. 785, R.

(70) Arts. 113, 120 and 178, Sch. II—*Suit to recover possession of land—Arbitration award, not filed in Court, nor enforced—Award, valid, effect of—Merger of original title—Specific Relief Act (I of 1877), S. 30—Contract, if award is—Civ. Pra. Code (Act XIV of 1889), S. 525.*

A suit for possession of immovable property, on declaration of plaintiffs' right thereto, on the basis of their purchase of the same, or in the alternative, on the basis of an award made by an arbitrator appointed by the parties, cannot be regarded as a suit for the specific performance of a contract within the meaning of Art. 113 (a).

Limitation Act (XY of 1877).—(Continued).

Such a suit cannot be regarded as an application or a suit to enforce an award and neither Art. 178 nor Art. 120 of the Act is applicable to it.

If an award is valid, it is operative even though neither party has sought to enforce it, either by a regular suit or by an application under S. 525 of the Civ. Pro. Code (b).

Per RAMPINI, J.—Such a suit is governed by Art. 144 of the Limitation Act and may be brought within twelve years from the date of the award.

Per MOOKERJEE, J.—Such a suit is governed by either Art. 142 or Art. 144 of the Limitation Act.

Per MOOKERJEE, J.—A valid award operates to merge and extinguish all claims embraced in the submission; and after it has been made, the submission and award furnish the only basis by which the rights of the parties can be determined and constitute a bar to any action on the original demand. It possesses all the elements of vitality, even though it has not been formally enforced and it may be relied upon in a litigation between the parties relating to the same subject matter, and it is binding upon the parties as embodying an adjudication of their rights (c). **Bhajahari Saha Banikya v. Behary Lal Basak**, 4 C. L. J. 162 = 38 C. 881.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 23 M. 593, 23 A. 285, 5 A. 263 and 16 A. 3, R. (b) 18 I.A. 73 = 18 C. 414, R. (c) 4 Q.B. 609; 10 B. and S. 606; 116 N. Y. 19; 15 Am. St. Rep. 376; 41 R.I. 183; 5 Am. Rep. 549; 4 Conn. 259; 10 Am. Dec. 140; 3 Harris and Johnson 383; 6 Am. Dec. 502; 12 Q.B. 576; 19 M. 290, 23 M. 593 and 23 A. 285, R., and F. 28 I. A. 111 = 23 A. 383; 12 I.A. 67 = 11 C. 386, R.

(71) Art. 115—See No. 49, *supra*.

Art. 115—See I, Nos. 63, 71 and 84.

(72) Arts. 115, 120 & 132, Sch. II—*Suit for arrears of malikana, not praying for enforcement of it as a charge upon land.*

Art. 132 of the Limitation Act, which provides a limitation of 12 years for suits, including those for *malikana*, for enforcing the payment of money charged upon immovable property, applies only to cases in which such payment is to be enforced out of the land on which it is charged. So, to the case of a suit or *malikana*, wherein plaintiffs have not

Limitation Act (XY of 1877).—(Continued).

sought to enforce the charge, upon the land concerned, Art. 132 is inapplicable. The claim for *malikana*, in such a case, must be regarded as arising out of a quasi-contract created by law, and, consequently, neither Art. 132 nor Art. 120 could govern the case but, Art. 115 would be the right one to apply. **Kallar Roy v. Ganga Pershad Singh**, 38 C. 998.

PRATT and BODILLY, JJ.

References :—7 A. 502 = L.R. 12 I.A. 12 (followed in 12 C. 389), D.

(73) Art. 116—See No. 96, *infra*.

(74) Art. 116, Sch. II—*Loan—Promise to pay—Personal obligation—Mortgage deed, inoperative, effect of—Mortgage, collateral or substitutional.*

Every loan implies a promise to re-pay, and an unqualified admission of indebtedness is equivalent to an express covenant and creates a personal obligation (a).

When there is an existing debt, and the payment of it is secured by a deed intended to operate as a mortgage, the pre-existing personal liability of the debtor is not superseded (b).

If the mortgage proves to be inoperative, the creditor is entitled to enforce the personal obligation.

Whether the mortgage is intended to be collateral or substitutional is a question of intention (c).

A suit to recover money due, upon a registered bond is a suit for compensation for breach of contract in writing registered within the meaning of Art. 116 of Sch. II of the Act (d).

A document which is intended to be a mortgage but is not operative as such, because not duly attested, is admissible in evidence as a money bond. S. 68 of the Evidence Act has no application to such a case. **Ethel Gorgina Kerr v. Clara B. Ruxton**, 4 C. L. J. 510.

RAMPINI and MOOKERJEE, JJ.

References :—(a) 3 Comstock. N. Y. 264, F. (b) 15 Wendell, N. Y. 218 & 7 Sergeant & Rawle, Pa. 218, Appl. (c) 2 Barbour N. Y. 559, F. (d) 6 C. 94 and 3 A. 600, F.

(75) Art. 116, Sch. II, *applicability of, to suit for compensation for breach of covenant in a registered sale deed.*

In the case of a contract of sale, in writing and registered, all terms, which the law implies or reads as part of the contract, must also be

Limitation Act (XV of 1877).—(Continued).

regarded as part of the registered writing for the purposes of Art. 116 of the Limitation Act and so (a), where an express agreement, on the part of the vendors, to re-imburse the vendee all costs incurred in obtaining the possession of the property sold, is contained in the sale deed, a suit for breach of such a covenant, which may even be regarded as an express one, will surely be governed by Art. 116. **Bahadur Lal v. Jadhao**, 2 N.L.R. 174.

ISMAY, J.C.

References :—(a) 21 M. 8 and 25 M. 587, 1' 11 B. 475, 25 B. 593, 3 A. 712, 18 A. 160 and 19 C. 128, R.

See, also, I, Res-Judicata, No. 15; and Transfer of Property Act, No. 15.

(76) Arts. 116, 62 and 97, Sch. II—*Instruments containing covenant for title or quiet enjoyment—S. 55 (2) or 108 (c) of the Transfer of Property Act, applicability of Art. 116 only to cases of—Instruments without such covenant, governed by Arts. 62 or 97.*

A registered *karar* had been executed by the first defendant in this case in favour of P, the plaintiff's predecessor in title granting to him the exclusive right of cutting trees in a forest, the property of the *tarwad* of which first defendant was the alleged *karnavan*. In a certain suit subsequently brought against P, and the first defendant, the former was restrained by an injunction, from cutting trees in the said forest, on the ground that the said *karar* was not binding on the *tarwad*. By the present suit, plaintiffs accordingly claimed recovery of damages, under the said *karar*, from the first defendant and from the *tarwad* properties. *Held*, that by reason of the finding, in the previous suit, that the *karar* was not binding on the *tarwad*, the present suit was *res judicata* so far as regards the claim against *arwad* properties. Further, on the point whether the plaintiff's personal remedy against the first defendant was barred by limitation, the lower Court had held that the claim was time-barred, the period of limitation being three years under Art. 62 of the Limitation Act. It was, however, contended on appeal that Art. 116 was applicable and that the period of limitation was six years. *Held*, that the above question depended on whether the *karar* could be construed as containing an implied covenant for title or for quiet enjoyment, of

Limitation Act (XV of 1877).—(Continued).

which there has been a breach and as the said instrument was merely an exclusive license to cut trees and contained express provisions that the licensee should have the right to cut down the trees alone (subject to the right of the *tarwad* to cut for their own necessities), with no right whatever to the land, no covenant either for title or for quiet enjoyment can possibly be implied therein, as could be done in the case of sales and leases of immovable property under S. 55 (2) and 108 (C) of the Transfer of Property Act so as to render Art. 116 applicable (a). The present suit based on the instrument should be taken as governed by Art. 62 or Art. 97 of the Limitation Act, the period of limitation being 3 years. **Mammikkutti v. Pushakkal Edom**, 29 M. 353.

WHITE, C.J., and BENSON, J.

Reference :—(a) 20 M. 58, *Distd.*

(77) Art. 118, Sch. II—*Adoption by widow—Suit for possession of immovable property after widow's death.*

Held, by the Full Bench, that, when a widow cannot adopt or appoint an heir without authority from her deceased husband, an adoption by her without such authority being a mere nullity, a suit for possession of immovable property after her death, by her reversioners, against the adopted son, is not governed by Art. 118 of the Second Schedule of the Limitation Act.

If a male owner governed by Customary Law, who is competent to adopt or appoint an heir under that law, but cannot adopt a daughter's son, appoints a daughter's son, as his heir, such an act must be declared invalid within six years as provided by the article. The same remark would apply where the adoption is not made with the proper ceremonies where ceremonies are required to constitute an adoption. But where the adoption is a thing unknown to the personal law of the adopter or where a person unauthorized by him, as for instance, a perfect stranger, does such an act on his behalf, the adoption has no legal inception and does not displace, or threaten to displace, the right of succession of the heirs who are consequently under no obligation to sue for a declaration of its invalidity. **Karm Dad v. Nathu**, 30 P.L. R. 1906.

SIR WILLIAM CLARK, C.J.

(78) Art. 118—*See No. 2, supra.*

Art. 118—See, also, I, 638, No. 89,

Limitation Act (XV of 1877).—(Continued).

Arts. 118 and 119—See I, Hindu Law (Reversers), No. 9.

(79) *Art. 120, Sch. II—*

A Hindu father governed by the *Mitakshara* contracted a mortgage debt on April 4, 1887. This was discharged, after his death, with the consideration of a subsequent mortgage made on October 28, 1892, by his two sons, one of whom was a minor. *Held*, that the mortgage was, as regards the minor executant, absolutely void, and in a suit upon this later mortgage, a prayer to enforce the pious obligation of the infant to pay his father's debt of 1887 was, under Art. 120, Sch. II, of the Act, barred six years after the due date of payment thereof. **Maharaj Singh v. Raja Balwant Singh**, 3 A.L.J. 274 = A.W.N. (1906), 117 = 28 A. 508.

STANLEY, C.J. and BURKITT, J.

Reference.—28 A. 206, F.

(80) *Art. 120, Sch. II—Hindu Law—Liability of the son to discharge father's debt to accrue when—Suit to recover the debt brought against the son more than 6 years after the date of decree—Separation of the son from the father.*

In execution of a decree under S. 90 of the Transfer of Property Act, the decree holder attached a certain share in a village a portion of which was released on the ground that it was the property of the son of the judgment-debtor who had separated from his father prior to attachment. The present suit was brought by the decree-holder for a declaration that the share of the son was, under Hindu Law, liable for the payment of the father's debt and for the recovery of the same by the sale thereof. This suit was brought more than 6 years after the decree under S. 90 and also from the date of separation.

Held, that, as the liability of a Hindu son to pay the debt of his father arises from the moment the father has failed to discharge the obligation, the suit, having been brought more than 6 years after the date of the decree under S. 90, was barred by limitation under Art. 120 of the Limitation Act. *Held*, further, that the suit was also barred, as it was brought more than 6 years from the date of the separation (a). **Mata Parshad v. Narendra Bahadur Singh**, 9 O.C. 360.

CHAMBER AND GRIFFIN, J. CB.

References.—(a) 21 A. 301, 28 A. 206 and 27 M. 248, R.

Limitation Act (XV of 1877).—(Continued).

(81) *Art. 120—Suit under S. 60 of the Punjab Tenancy Act for cancellation of a voidable transfer of a right of occupancy—See ACT XVI OF 1887 (PUNJAB TENANCY), No. 9, 7 P.R. 1905 (Rev.)*

(82) *Suit under S. 77 (8) (b) of the Punjab Tenancy Act, applicability of Art. 120 to—See ACT XVI OF 1887 (PUNJAB TENANCY), No. 9, 7 P.R. 1905 (Rev.).*

(83) *Art. 120—See Nos. 88, 41, 42, 58 & 67, supra.*

(84) *Art. 120—See Nos. 70 & 72, supra.*

(85) *Art. 120—See No. 96, infra.*

(86) *Art. 120—ancestral property, alienation of—suit by an after-born son of the alienating proprietor—custom—*

Plaintiff was the son of a Jat proprietor. The proprietor mortgaged ancestral property in 1898. Plaintiff was born in 1900. This suit was brought by plaintiff, in 1904, for a declaration that the alienation by his father was not binding on his reversionary interest. *Held*, the cause of action, giving the right to sue, having commenced on the date of alienation, and limitation having expired before the plaintiff's birth, the suit was barred by limitation and could not be revived on the plaintiff's birth in 1900. **Ganpat v. Dhani Ram**, 76 P. R. 1905 = 125 P.L.R. 1906.

CHATTERJI and KENNINGTON, JJ.

Reference.—84 P. R. 1898 (P. R.), R.

(87) *Art. 120—Pre-emption—Mortgage, by way of conditional sale.*

Art 120 of the Second Schedule of the Act is applicable to a suit for pre-emption in respect of a sale under a clause of condition sale by foreclosure of a mortgage (a).

There is no difference in principle between a compulsory and a voluntary sale as regards limitation for suits for possession. **Bhola Singh v. Alim**, 112 P.L.R. 1906.

ROBERTSON, J.

Reference.—(a) 160 P. R. 1889, F.

(88) *Art. 120, Sch. II—Limitation—Shamilat land—Suit for possession by partition of Shamilat land—Wrong entry in revenue records.*

The plaintiffs, alleging that the *shamilat* land in suit pertained to a certain *patni*, brought a suit for possession of their share by partition against the defendants, who claimed

Limitation Act (XV of 1877).—(Continued).

that it belonged to the whole village. In the Settlement Record of 1885, the land was recorded as *khajana* of the whole village. The suit was dismissed, on the ground that a suit for declaration that the Record was erroneous was barred under Art. 190 of the Limitation Act at the time the suit was brought.

Held, that the suit was not barred by limitation, the cause of action being recent invasion by the defendants of the rights of the plaintiff and the refusal by the Revenue Court to effect partition. The statement in the plaint that the Record was erroneous did not make the correction of that Record a condition precedent to the relief claimed being decreed. *Teju v. Kanhaya*, 151 P.L.R. 1906.

RUBB, C.J.

See, also, I, Nos. 45; 47, 63, 66, 69, 70, 72, 76 and 99; and Act XVI of 1887 (Punjab Tenancy), No. 5; and Cause of Action, No. 8.

(89) Arts. 120 and 182—Sale of mortgaged property at the instance of the first mortgagee—Surplus sale-proceeds withdrawn by third mortgagee—Suit by second mortgagee to enforce his lien on surplus sale-proceeds—Applicability of—*See MORTGAGE (SALE)*, No. 1, 9 C.W.N. 989.

See, also, I, Mortgage (Sale), No. 17.

Arts. 120 & 144—See, I, 640, No. 97.

(90) Art. 132—*See INSOLVENCY*, No. 3, 9 C.W.N. 952.

See, also, I, Insolvency, No. 3.

Art. 124—See I, Ghatwali Tenure, No. 1.

Arts. 124 and 141—See I, 642, No. 100.

Arts. 124 and 144—See I, 642, No. 101.

(91) Arts. 127 and 142—Proof of exclusion—*See HINDU LAW (JOINT FAMILY)*, No. 14, 4 C.L.J. 66.

(92) Art. 181 of Sch. II of the—, mere non-collection of *kattubadi* for twelve years without any denial by the tenant of the landlord's right is not enough for such right becoming barred under—*See Civ. Pro. Code*, No. 11, 16 M.L.J. 35.

(93) Art. 181—*See No. 52, supra.*

(94) Art. 129—*See Nos. 65, 69, 72 and 89, supra.*

Art. 122—See, also, I, 643, 644, Nos. 102 and 103.

Limitation Act (XV of 1877).—(Continued).

(95) Arts. 122 and 111, Sch. II—Charge on immovable property under S. 55 of the Transfer of Property Act, suit for enforcing, governed by Art. 122 and not by Art. 111.

The charge under consideration, in the present case, was not the vendor's lien for unpaid purchase-money, contemplated by Art. 111 of the Limitation Act, but the statutory charge arising by virtue of S. 55 of the Transfer of Property Act. Such a charge, which a vendor obtains under the said S. 55, is different from the lien given to an unpaid vendor (a) and the period of limitation for a suit to enforce a charge of the former description is twelve years, from the date of sale, under Art. 122, and not the three years under Art. 111. *Ramakrishna Ayyar v. Subrahmanya Ayyar*, 29 M. 305.

WHITE, C.J. and SUBRAHMANYA AYYAR, J.

References.—(a) 31 C. 57 (P.C.) R. and Appl. 21 M. 141, 24 M. 293 and 27 M. 28, overruled.

(96) Arts. 122, 116, 120—Sale for arrears of revenue—Mortgagee's charge on sale proceeds—Suit to enforce charge.

When an estate is sold for arrears of revenue, the mortgage of a share of such estate executed between the date of default and the date of sale is invalid as against the purchaser but the mortgagee is entitled to the charge on the surplus sale proceeds, after payment of the arrears of revenue; and the article of the Limitation Act applicable to a suit brought by the mortgagee to enforce such charge is not Art. 116, or 120 but Art. 122; and the date from which the period of limitation begins to run is the due date under the mortgage bond and not the date of sale. *Matarra Gupta v. Uma Charan Sen*, 3 C.L.J. 52.

BRETT and MOOKERJEE, JJ.

(97) Art. 124.

The fact that the lessee had notice that the property she was acquiring was *debutter* property does not preclude the lessee from being regarded as purchaser within the meaning of Art. 124, and an 'assign for valuable consideration,' within the meaning of S. 10 of the Limitation Act. *Shyama Charan Nundy v. Abhiram Goswami*, 3 C.L.J. 306 = 10 C.W.N. 798 = 33 C. 511.

MACLEAN, C.J. and GRINDY, J.

(98) Art. 124, Sch. II—Bona fide purchaser from mortgagee, redemption from—Ostensible owner—Suit to redeem brought more than 12 years after sale.

Limitation Act (XY of 1877).—(Continued.)

Held, that, where, a person, believing that his vendor had an absolute interest in a certain property, of which he was only the mortgagee, purchased the same for valuable consideration, the suit brought by the heirs of original mortgagor, to redeem the property from such purchaser, if brought more than 12 years after the date of sale, was barred by limitation. **Mahabir Singh v. Rana Sheoraj Singh**, 9 O. C. 373.

EVANS & GRIFFIN, J. C.

References:—9 A. 97, 22 B. 225 & 14 M. I.A. 1. R.

(99) Art. 134—Purchaser of mortgagee's rights—See MORTGAGE (REDEMPTION), No. 18, 16 M.L.J. 358.

See, also, I. 644 and 645, Nos. 104 106; and Mortgage (Redemption), No. 14.

Arts. 134 and 144—See I, Civil Pro. Code, No. 278.

(100) Art. 135—Possession of mortgaged property, suit by mortgagee for—Regulation VII of 1806, S. 8.

In a deed of mortgage by way of conditional sale, dated the 3rd May, 1868, it was stipulated that the principal amount with interest should be paid within five years, and that "should this amount be not paid within the time above specified and the whole or portion thereof remain unpaid, this mortgage-deed will be considered an absolute deed of sale free from all disputes and the mortgagee will be entitled to possession of the village according to the terms of a deed of sale." On the 22nd January, 1903, the mortgagee brought a suit for foreclosure and possession of the mortgaged property on failure of the mortgagors to pay the sum alleged to be due on the mortgage.

Held, that the mortgagee having become entitled to possession on the 3rd May, 1868, the suit which was instituted on the 22nd January, 1903, was barred by limitation under Art. 135 of the Act. **Janki v. Mt. Jai Del**, 9 O.C. 147 (B).

SCOTT and WELLS, J.C.

References.—16 C. 693, 22 W.R. (P.C.), 90, 10 C. 68 and 12 C. 614, R.

See, also, I, No. 76.

(101) Arts. 135 and 144—See MORTGAGE (CONDITIONAL SALE), No. 3, 65 P.R. 1906.

(102) Art. 136, Sch. II—Suit by purchaser of equity of redemption for possession of mortgaged property—Value for purposes of appeal—Punjab Courts Act, S. 70 (1) (b)—Conversion of sale into mortgage.

Limitation Act (XY of 1877).—(Continued.)

A Suit by the purchaser of the equity of redemption, for possession of the mortgaged property, is governed by Art. 136, and limitation runs from the date of redemption (a).

The value of the suit, for purposes of appeal, is the sum fixed as payable on redemption (b), and not thirty times the annual revenue, and an appeal lies under S. 70 (1) (b), Punjab Courts Act.

A vendor is entitled to include a petty sum in the sale consideration for current expenses, and it is an error to convert a sale by a limited owner into a mortgage, merely because a petty sum out of the consideration was paid in cash for current expenses and was not proved to have been for necessity. **Badri Mal v. Gopal**, 130 P.R. 1906.

REID, C.J., and ROBERTSON, J.

References:—(a) A.W.N. (1893), 67, F. (b) 24 P.R. 1908 (F.B.), F.

(103) Arts. 136 and 144—Meaning of the words 'out of possession' in Art. 136—Suits governed by Art. 144, burden of proof on defendant in.—

The expression 'out of possession,' as used in Art. 136 of Sch. II of the Limitation Act, implies that some person is in possession adversely to the vendor, some person holding in a character incompatible with the idea that the ownership remains vested in the vendor (a). So, in case of sale by a lessor, he cannot be said to be out of possession so long as the lessee, who derives his title from him, is in possession because, until something occurs to determine the lease, the possession of the lessee is the possession of the lessor.

Under Art. 144 of the Limitation Act, time runs from the date when the possession of the defendant becomes adverse and it is incumbent on the defendant, if he relies on adverse possession to displace a proved title, to show when such adverse possession commenced (b). **Ganpat Rao Bhonsle v. Ganpat Rao Gopal Ghatatay**, 2 N.L.R. 32.

ISMAY, J.C.

References.—(a) 2 Sm. L.C. 635, R., (b) 13 B. 424, 14 B. 458, 14 M. 96, R.

(104) Arts. 139, 141 and 144.

The widow of a last Hindu male owner died, having let a part of her husband's property in her hands to the defendants as tenants-at-will.

Limitation Act (XV of 1877).—(Continued).

On her death, plaintiffs (reversioners) sued for possession of the lands in the hands of the defendants. The suit was filed more than 12 years after the death of the widow, but within 12 years from the date on which the defendants set up an adverse title. On the question of limitation, it was held, the possession of a tenant-at-will holding over the estate of a widow after her death, not being adverse to her reversioners until the expiration of the tenancy, the cause of action to the reversioners begins to run only from the date of the tenant setting up an adverse title; and the suit in this case, having been filed within 12 years of the setting up of the adverse title, was not barred by limitation. **Ghodu Singh v. Khushal Singh**, 90 P.R. 1906.

REID, J.

References.—43 P.R. 1901, 41 P.R. 1903, 24 B. 504 and 25 A. 435, R.

(105) Art. 141, Sch. II.—See Nos. 58 and 104, *supra*.

See, also, I, 646, 647, Nos. 108 and 109.

(106) Art. 142—Limitation—Adverse possession—Government revenue—Defaulter—Share of defaulter let on farming lease—Share not claimed on expiry of lease.

One Mulchand, who owned an 8-anna zamindari share in *mauza* Rajipur, disappeared in 1857 leaving Government revenue unpaid. His share was thereupon made over to Mangu Lal, and afterwards to one Pahalwan Singh, on a farming lease which expired in 1871. On the expiry of this lease, Pahalwan Singh still retained possession of the property, and ultimately in 1891 it was sold in execution of a decree against him and purchased by the predecessor in title of the answering defendants. In 1903 a suit was brought for recovery of possession by the purchasers of Mulchand's rights from his representatives. Held, that after 1871, Pahalwan Singh's possession became adverse to Mulchand and the suit was barred by limitation. Approved. **Madhe Ram Singh v. Surjan Kunwar**, A.W.N. (1905), 282 = 3 A.L.J. 16 = 28 A. 281.

KNOX and AIKMAN, JJ.

Reference.—38 P.R. 1885, *Appr*.

(107) Art. 142—Possession, suit for—Limitation—Onus—Presumption from title.

It is for the plaintiff in a suit for ejectment to prove possession prior to the alleged dispos-

Limitation Act (XV of 1877).—(Continued).

session. At the same time, in this question of evidence, the initial fact of the plaintiff's title comes to his aid with greater or less force according to the circumstances established in evidence. **Rani Hemanta Kumari Debi v. Maharaja Jagadindra Nath Roy Bahadur**, 10 C.W.N. 630 (P.C.) = 3 A.L.J. 363 = 8 Bom. L.R. 400 = 1 M.L.T. 135 = 16 N.L.J. 272.

LORD DAVEY, LORD ROBERTSON, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

(108) Art. 142, Sch. II.—Suit by vendee for possession of immovable property—Vendor out of possession—Burden of proof.

Where a vendee of immovable property sues for possession, his vendor not having been in possession at the time of the sale, it lies upon the plaintiff to shew that his vendor was in possession at some period within twelve years prior to the date of the suit (a).

And when, in such a case, the property sold was a share in a house belonging to two separated brothers, it was held that the possession of one of the brothers could not be taken to be on behalf of the absent vendor. **Deba v. Rohtagh Mal**, A.W.N. (1906), 95 = 3 A.L.J. 334 = 28 A. 479.

BANERJI, J.

Reference.—16 B. 343, F.

(109) Art. 142—See SPECIFIC RELIEF ACT (I OF 1877), No. 1, 33 C. 821 and No. 9, *supra*.

See, also, I, 647-650, Nos. 110, 112, 113, 114; and *Budhist Law*, No. 1 and *Its Jurisprudence*, No. 29.

Arts. 142 and 144—See I, 650, No. 116.

(110) Art. 144—

A permanent *mokurrari* lease is an alienation of the proprietary interest *protanto*, and if the property is debutter, the alienation by the lessor is beyond his legal competence and the possession of the lessee becomes adverse to the lessor as from the date of the lease, and a suit to recover possession of such property as debutter property is *prima facie* governed by Art. 144 of the Act. **Shyama Charan Mundy v. Abhiram Goswamy**, 3 C.L.J. 306 = 10 C.W.N. 738 = 33 C. 511.

MACLEAN, C. J. and GEIDT, J.

References.—23 M. 271 (P.C.), F. 15 W. R. (P.C.), 24, 2 C.L.J. 448, D.

(111) Art. 144.—See Nos. 2, 38, 60, 101 & 103, *supra*.

Limitation Act (XV of 1877).—(Continued).(112) Art. 144—See No. 104, *supra*.

(113) Art. 144—Possession of land adversely to next reversioner of a deceased proprietor—Death of the next reversioner—Suit by the more remote reversioners against defendant, accrual of cause of action for—Starting point of limitation under Art. 144.

The property in dispute had belonged to two brothers, A and M. M was the rightful heir on A's death, but B and K, the step-sons of A, succeeded him to the exclusion of M, who never tried to oust B and K. On M's death, plaintiffs, certain remoter reversioners, sued B and K for the lands, on the ground that defendants ought not to have succeeded A, having been only his step-sons. *Held*, that, since M was clearly A's heir, it was directly contrary to his interest to have allowed B & K to remain in possession, and time therefore began to run from A's death, and the defendants have acquired a good title under Art. 144 by more than twelve years' adverse possession. **Kaka v. Lakh Chand**, 106 P.R. 1906.

ROBERTSON and CHITTY, JJ.

Reference.—18 P. R. 1895 (F.B.), D.

See, also, I, *Adverse Possession*, No. 1; and *Mortgage (Redemption)*, No. 14.

(114) Arts. 144 and 148—Suit for redemption against a redeeming co-mortgagor—See TRANSFER OF PROPERTY ACT, No. 96, 9 O. C. 91.

(115) Art. 147, Sch. II—Hypothecation bond, limitation for a suit on a—

There was a suit on a hypothecation bond which ran thus :—"For this, the consideration money, is mortgaged the following property acres.....The said property is mortgaged but is retained in our possession." *Held*, the article of Limitation Act applicable to the case was Art. 147 of the Second Schedule. **Chairman Municipal Council, Rajahmundry v. Venkateswaralu**, 16 M.L.J. 58.

DAYIES and SANKARAN NAIR, JJ.

Reference.—25 M. 290, F.

(116) Art. 148—See TRANSFER OF PROPERTY ACT, No. 96, 9 O.C. 91 and No. 114, *supra*.

Art. 149—See I, 654, No. 121.

Art. 152—See I, No. 6.

Art. 156—See I, No. 27.

(117) Art. 158, inapplicability of, to cases of invalid awards—See CIV. PRO. CODE, No. 258, 2 N.L.B. 81.

Limitation Act (XV of 1877).—(Continued).

(118) Art. 164—Attachment before judgment—Civ. Pro. Code (Act XV of 1882), S. 490—Confirmation of attachment after decree—Starting point of limitation.

Where an attachment before judgment has been levied and an *ex parte* decree passed, the time to set it aside is thirty days, under Art. 164 of the Act, from the date of executing any process for enforcing the judgment. An application after decree, for confirmation of the attachment under S. 490, Civ. Pro. Code, does not give the starting point of limitation, as it is not an enforcement of any process of execution warranted by law. **Sidharathral Seejanrai v. Anantram Buldeodas**, 8 Bom. L.R. 567.

SIR LAWRENCE JENKINS, C.J. and ASTON, J.

(119) Art. 164, Sch. II—Attachment of property other than judgment-debtors', whether a process within the article.

Held, that the process relied on for computing time for the application in question under S. 108 of the Civil Procedure Code *vis.*, that of an attachment, in execution of the *ex parte* decree sought to be set aside, of property not belonging to the judgment-debtor was not a process for enforcing the judgment within the meaning of Art. 164 of the Act and, so, of no effect towards barring the application by limitation. **Nga Tha Din Mi Tin v. Nga Po Chan**, U.B.R. (1906), Limitation 7.

SHAW, J.C.

References.—7 A. 345, 9 C. 869, 82 P. R. 90 (Civ.), U.B.R. (1904-5), Civ. Pro. 26, 15 W. R. 210 and 25 W.R. 72, R.

(119-a) S. 178—See No. 12, *supra*.Art. 164—See, also, I, *Small Cause Courts Act (Provincial)*, No. 1 and *Civil Pro. Code*, No. 84.Art. 172—See I, *Civil Pro. Code*, No. 206.

Art. 173—See I, No. 7.

(120) Art. 175—Execution of decree—Execution transferred to Collector—Partial execution—Application for instalments—See ACT XVII of 1879 (DEKHAM AGRICULTURISTS, RELIEF), No. 8, 8 Bom. L.R. 968.

See, also, I, *Civil Pro. Code*, No. 222.

(121) Art. 175 A—Substitution, application for—Application after preliminary decree for sale in mortgage-suit—Mortgage, death of—Application by heirs—Transfer of Property Act (IV of 1882), S. 30—Conditional decree, effect of.

Limitation Act (XY of 1877).—(Continued).

Where a mortgagee having obtained a preliminary decree for sale under S. 88, Transfer of Property Act, died and his heirs more than six months after his death applied to be brought on the record in the place of the deceased and to have an order absolute for sale made in their favour;

held—That the application for substitution was not governed by Art. 175 A of Sch. II of the Limitation Act.

Applications governed by Art. 175 A of Sch. II of the Limitation Act are applications for substitution made in the course of the suit.

After a conditional decree for sale is passed on a mortgage, the suit as such is at an end (a).
Mehari Bibi v. Yakub Ali, 11 C.W.N. 156.

GHOSH & GEIDT, JJ.

References :—(a) 21 C. 818 & 22 C. 931, R.

Art. 175 (e)—*See I, Civil Pro. Code, No. 226.*

(121-a) S. 175 (c)—*See No. 124, infra.*

(122) Art. 176—*See No. 15, supra.*

(123) Art. 178—Decree for perpetual injunction, limitation for execution of—*See Civ. Pro. Code, No. 96, 29 M. 314 and Nos. 38 & 70, supra.*

See, also, I, 653, 654, Nos. 127 & 128; and Civil Pro. Code, No. 226.

(124) Arts. 178, 175 (c)—*Limitation for bringing legal representatives on record—second appeal.*

An application to substitute the legal representatives of a deceased respondent in second appeal is governed by Art. 178, and not by Art. 175 (c), Sch. II, Limitation Act. **Socaya Pillai v. Aiyakannu Pillai**, 16 M.L.J. 475—1 M. L. T. 348—29 M. 529.

WHITE, C. J., and SUBRAHMANYA IYER and BENSON, JJ.

References:—9 M. 1, 10 A. 264, 10 B. 663 and 12 C. 590, F. 28 M. 498, *not F.*

(125) Arts. 178 and 179—*Old and unclaimed deposits in High Court and Intestates' Estates Act (XXV of 1886)—Money in deposit in Court—Application by judgment-creditor for payment of fund in Court—Limitation—Money, if realised in execution of decree—"Step in aid of execution."*

An application by a judgment-creditor for payment of a fund or money in Court attached, would be "a step in aid of execution" within the meaning of Art. 179 (4), if the money or fund of which payment is sought has not been

Limitation Act (XY of 1877).—(Continued).

realised in execution as the result of the attachment. Such an application would be governed by Art. 178.

Application by a judgment-creditor for payment of money already realised in execution for him cannot be barred except under Act XXV of 1866.

Where a fund standing to the credit of a suit was directed to be paid to some of the parties in the suit:

Held, that, no bar of limitation attached to their application for drawing out of the same although made 15 years after the order for payment. **Apurba Krishna Roy v. Chundermoney Debi**, 10 C.W.N. 354 (F.B.)

MACLEAN, C.J. and SALE and HARRINGTON, JJ.

(126) Arts. 178, 179, Sch. II—*Application to revive former application for execution.*

Where a decree-holder applied for the sale in execution of shares in five villages and shares in two villages were sold and the decree satisfied but subsequently the sale was held to be a nullity, and the decree-holder made an application to revive the previous application. *Held*, that this was not an application coming under S. 179 of the Second Schedule of the Limitation Act, but an application to which Art. 178 applied, the right to apply accruing on the date when the sale was held to be a nullity. **Behari Lal Mir v. Jaganath Pershad**, A.W.N. (1906), 152=3 A.L.J. 845=28 A. 651.

BANERJI and AIKMAN, JJ.

References.—3 A. 484, 7 M. 595, D.

(127) Arts. 178, 179, Sch. II, inapplicability of, to application for specification of share by metes and bounds in respect of a defective partition decree—*See Civ. Pro. Code, No. 224, 47 P. R. 1906.*

See, also, I, 655, 656, Nos. 130, 131 and 132. Arts 178, 179 (Expl. 1)—See I, Execution of Decree, No. 76.

(128) Art. 179—*Application for execution of mortgage decree, after partial satisfaction by a previous execution-proceeding—Transfer of Property Act (IV of 1882,) S. 90—Order of the Court passing a decree for the balance—Decree.*

Where on an application under S. 90 of the Transfer of Property Act, the Court passed an order for the balance of the decretal amount to

Limitation Act (XV of 1877).—(Continued).

be recovered, and a decree specifying the exact amount to be recovered was passed three days later in accordance with that order, *held*, that, as regards an application for execution, limitation of three years will be counted from the date of the decree and not from the date of the order! **Madan Mohan Das v. Mohin Kishore Deb**, 3 C. L.J. 291.

GHOSH and GEIDT, JJ.

(129) *Art. 179—Execution of decree—Decree granting an injunction—Civil Procedure Code, S. 260.*

Art. 179 of the Second Schedule to the Indian Limitation Act, 1877, does not apply to an application asking the Court to enforce a decree granting an injunction to abstain from some particular act. All that the Court has to see is whether the party bound by the decree has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it. **Bhagwan Das v. Sukhdri**, A.W.N. (1906), 10=28 A. 300=3 A.L.J. 836.

BANERJI, J.

Reference.—23 A. 465, F.

(130) *Art. 179—decree for sale—appeal by one defendant—time against others saved.*

Where the decree was for sale upon a mortgage, jointly executed by three mortgagors, an appeal by one of them saves limitation against all of them. The principle laid down in **Ganga Kuar v. Kesar Kuar**, 1 A.L.J.R. 409, only applies to a case of money decree which could be executed against any judgment-debtor. **Dhuman Mal v. Panna Lal**, 3 A.L.J. 381=A.W.N. (1906), 155.

KNOX and AIKMAN, JJ.

(131) *Art. 179, Sch. II—Execution application by mother as next friend of her son wrongly described as minor, whether in accordance with law so as to keep alive the right to execute the decree.*

The point for decision in this case was, whether the execution application, made by the mother of the decree-holder, as his next friend, describing him as a minor, while in reality he was a major, was an application effective for the purpose of keeping alive the decree and preventing the execution thereof being barred by limitation. The lower Court was of opinion that the application by the mother was nothing more than an irregularity and that the proceedings were only technically

Limitation Act (XV of 1877).—(Continued).

defective. *Held*, on appeal the application was not one in accordance with law for the purposes of the above Art. 179 and the question was not whether the proceedings by the mother were void for all purposes, but whether they amounted to an application according to law for a step in aid of execution (a) within the said article: on behalf of the respondent, it was contended that the application should be treated as made by the respondent, the decree-holder, that it fulfilled the requirements of S. 285, Civ. Pro. Code and was, therefore, in accordance with law, since it was verified, by the mother and the section did not require that it should be signed by the applicant and it was *held*, that, on the face of the application, it was clearly the application of the mother, and not that of the respondent. **Potukashi Saramma v. Donapudi Seshayya**, 1 M.L.T. 113.

WHITE, C.J., and DAVIES, J.

Reference.—(a) 21 C. 866, D.

(132) *Art. 179, Sch. II—Execution of decree—Limitation—Execution suspended by action of Court.*

The plaintiff's suit was dismissed by the first Court; was remanded on appeal under S. 562 of the Code of Civil Procedure, and after remand decreed by the first Court on the 21st September, 1897. On appeal, the lower appellate Court dismissed the suit on the 28th of August, 1898. On second appeal, the High Court, on the 30th of January, 1901, set aside this decree and remanded the case to the lower appellate Court under S. 562 of the Code of Civil Procedure. After this remand, one of the defendants died. No legal representative of the deceased having been brought on the record, the Court *held* that the appeal had abated, and on the 5th of June, 1902, passed a decree which, in terms, affirmed the decree of the 21st September, 1897. On the 19th of January, 1904, the decree-holder applied for execution. *Held*, that the application was within time, whether the *terminus a quo* was regarded as the 30th January, 1901, or as the 5th of June, 1902. **Kawal v. Tirkha**, A.W.N. (1906), 27=3 A.L.J. 8=1 M.L.T. 59.

BANERJI, J.

(133) *Art. 179—Limitation—Execution of decree—Application not "in accordance with law"—Civil Procedure Code, S. 336—Insolvency.*

Limitation Act (XY of 1877).—(Continued).

Where the judgment-debtor has applied for a declaration of insolvency and proceedings in insolvency are pending on his application, no application for execution can be made against the judgment-debtor's surety. If, therefore, such application is in fact made, it will not be an application "in accordance with law" within the meaning of Art. 179 (4) of the Second Schedule to the Indian Limitation Act, 1877 (a).

Held, also, that the resistance of the decree-holder to the judgment-debtor's application for insolvency will not amount to the taking of a step in aid of execution within the meaning of Art. 179. **Langtu Pande v. Baijnath Saran Pande**, A.W.N. (1906), 54 = 3 A.L.J. 13, 28 A. 387.

BANKERJI, J.

References.—(a) 12 A. 64 and A.W.N. (1906), 182, F.

(184) *Art. 179—Application for withdrawal of money standing to the credit of a decree-holder whether, "a step in aid of execution."*—*Application for a ministerial order distinguished.*

An application by a decree-holder for withdrawal of money standing to his credit, although made in accordance with the rules prescribed by the High Court, is an order ministerial and not judicial, and, as such, is not a step in aid of execution within the meaning of Art. 179. **Sadananda Sarma v. Kali Sankar Bajpai**, 3 C.L.J. 95.

GHOSH and GEIDT, JJ.

References.—8 C. 89; 11 C. 227; 10 C. 549 and 28 C. 196, R., 27 C. 709 and 8 C.W.N. 382, D.

(185) *Art. 179—Mortgage-decree leaving the terms as to the sale of the land to be determined subsequently, limitation for application to execute—*

In a mortgage-decree of the 13th of August, 1894, the terms as to the sale of the land were left to be determined later on; and at that date, therefore, it was not a final or immediately executable and effective decree so far as the lands were concerned. On the report of a Commissioner appointed for the purpose of ascertaining the necessary values and accepting his valuations, the District Judge passed an order on the 25th February, 1896, settling the terms as to the sale of the lands. *Held*, that an application to execute the decree presented on the

Limitation Act (XY of 1877).—(Continued).

24th February, 1899, was within time as it was within three years of the date of the above order, which alone enabled the decree-holder to seek and obtain relief in execution with reference to the sale of the lands. **Ratnachalam Ayyar v. Venkatrama Ayyar**, 29 M. 46.

SUBBRAHMANIA AYYAR, OFFG. C.J. and BODDAM, J.

(186) *Art. 179, Sch. II—Execution of decree—Limitation—Application for a "seal warrant."*

An application made to the Court of Small Causes at Calcutta, in execution of a decree issued therefrom, for the issue of a "seal warrant" is an application to the Court to take a step in aid of execution of the decree, within the meaning of article 179. And such would be the case notwithstanding that, owing to the absence of the record in another Court, a seal warrant could not at once issue on the acceptance of the decree-holder's application. **Lachman Das v. Narain Das**, A.W.N. (1906), 269 = 3 A.L.J. 815.

STANLEY, C.J. and RUSTOMJEE, J.

Reference:—29 C. 581, R.

(187) *Art. 179—See Civ. PRO. CODE, No. 224 47 P. R. 1906 and Nos. 15, 125, 126 and 127 supra.*

(188) *Art. 179, Sch. II—Mortgage decree—Execution of decree—Application for a decree under S. 90—Transfer of Property Act (IV of 1882), S. 90—Step in aid of execution—Application in accordance with law, meaning of—*

An application for a decree absolute under S. 90 of the Transfer of Property Act is an application for a supplemental decree in the suit and not an application in aid of execution of the original decree within the meaning of Art. 179 of Sch. II of the Limitation Act (a).

Quære.—Whether an application for a decree under S. 90 was or was not necessary, where the mortgage decree contained a clause, entitling the decree-holder to proceed against property of the judgment-debtor other than that included in the mortgage-decree?

Where the sale of the mortgaged properties is set aside, an application for a decree under S. 90 is not an application in accordance with law within the meaning of Art. 179 so as to

Limitation Act (XY of 1877).—(Continued).

save limitation. **Purna Chandra Mandal v. Radha Nath Das**, 4 C. L. J. 141=33 C. 867.

RAMPINI and MOOKHERJEE, JJ.

References:—(a) 13 A. 356 and 21 A. 453, Diss.

(139) *Art. 179—Injunction, effect of—Continuation of execution-proceeding.*

The holder of a mortgage-decree having applied for execution thereof, the judgment debtor's son claiming a share in the mortgaged property, obtained an injunction restraining the sale of such share in execution. The suit of the son having since been withdrawn, the decree-holder applied, more than three years from the date of the first application for execution, to execute the decree by sale of the whole property. *Held*, that the latter application was a continuation, of the first application for execution and that consequently, it was not barred by limitation. **Guru Deo Narayan Sinha v. Amrit Narayan Sinha**, 33 C. 689.

HARRINGTON and PRATT, JJ.

Reference.—17 C. 268, D.

(140) *Art. 179, Sch. II—Civ. Circulars, Rule 80—Decree—Execution—Application for execution—Application not accompanied by copy of the decree—Application made 'in accordance with law'—Construction of rule.*

An application for execution of a decree, though not accompanied by a copy of the decree, as required by Rule 80 of the High Court Circulars (Civil), is an application 'in accordance with law' within the meaning of article 179, Sch. II of the Act.

The proper view to take of Rule 80 is, not that it prescribes the essentials, which an application for execution must contain, and which are necessary to constitute the application itself an application in accordance with Law, but that it requires something further besides the application itself, an accompaniment extraneous to the application, as a condition precedent to further action by the Court executing the decree (a).

The Limitation Act, as an enactment of restrictive character, must be strictly construed (b). **Ramachandra Sadashiv v. Laxman Sadashiv**, 8 Bom. L.R. 892.

BATTY and HEATON, JJ.

References:—(a) 5 Bom. L.R. 304, *not F.*, 28 M.S. 557, *F.* (b) 1 B. 19, *F.*

Limitation Act (XY of 1877).—(Continued).

See, also, I, 657-659, Nos. 134, 135, 136, 138; and 661, Nos. 145 and 146; and *Execution of Decree*, No. 85.

(141) *Art. 179, Sch. II, Explan.—Decree passed jointly—Application for execution against one of the judgment-debtors—Surety and judgment-debtor—Surety under S. 253 of the Civ. Pro. Code—Surety and judgment-debtor are not joint judgment-debtors.*

Before the passing of a decree, a surety became liable for the due performance of part of the decree. The decree was passed in January, 1893. No *darkhasts* were preferred against the surety till 20th June, 1902, though application for execution was made in time against the judgment-debtor alone. On the question whether the *darkhast* against the surety was barred, *held*, that the *darkhast* was time barred, as the decree-holder was not entitled to take advantage of the previous application for execution of the decree, which he made against the judgment-debtor.

The explanation to article 179 refers to the decree which is 'passed jointly' against more persons than one, and does not refer to a decree where a joint liability may be deduced by combining the surety bond and the provisions of S. 253 with the decree in dispute. **Narayan Ganpatbhat v. Timmaya Subhaya**, 8 Bom. L.R. 807.

ASTON and HEATON, JJ.

Reference:—23 B. 478, R.

Art. 179 (2)—See, I, 659, No. 141.

(142) *Art. 179 (4)—Execution of decree—Limitation—Step in aid of execution—Decree-holder filing receipt certifying payment of part of decree money.*

The filing by a decree-holder of a receipt acknowledging payment of part of the decree money is an application to take some step in aid of execution within the meaning of clause 4 of Art. 179 (a). **Barkat Ali v. Ganga Ram**, 34 P.L.R. 1906.

LAL CHAND, J.

References.—(a) 26 A. 10, 12 A. 309 (F.B.), 9 A 99, *F.*

(143) *Art. 179 (4)—step in aid of execution—application by legal representatives of decree-holder to be brought on record.*

Held, that, where, on the death of the original decree-holder, his legal representatives,

Limitation Act (XY of 1877).—(Continued).

apply to be brought on the record in his place they are taking a step in aid of execution of their decree within the meaning of cl. (4) of Art. 179, Sch. II of the Act. **Makrand v. Ram Charan**, 9 O.C. 281.

EVEN, J.C.

Reference :—24 C. 778, R.

See, also, I, 659, Nos. 142 & 143; 662, 663, Nos. 150 & 151; and *Civil Pro. Code*, No. 111.

(144) Art. 179 (4 and 5)—*Step in aid of execution—Application for leave to bid at a sale, whether such step.*

Per RAMPINI, J.—An application by the decree-holder for permission to bid at a sale held in execution of a decree is not an application to the Court to take some step in aid of execution (a).

Per MOOKERJEE, J.—It cannot rightly be affirmed as an inflexible rule of law that the granting of leave to a decree-holder to bid at a sale in execution of a decree must, in every case, or may not in any case, amount to an aiding of the execution.

When a decree-holder relies upon a previous application to the Court for leave to bid at the sale, as saving limitation, it is not sufficient for him to shew that such application was made, but he must further show that the circumstances under which it was made were such that the grant of leave did in fact aid or would have aided the execution. **Hira Lal Bose v. Dwija Charan Bose**, 3 C.L.J. 240; 10 C.W.N. 209.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 9 C. 780 and 28 C. 690, F., 30 C. 761 (769), *disapproved*.

See, also, I, 660, No. 144.

(145) Art. 179 (5)—*See* No. 144, *supra*.

(146) Art. 179 (5)—*Notice under S. 248 of the Civil Procedure Code (Act XIV of 1882) —“Date of issuing notice,” meaning of—Ministerial act.*

Held (PARCITER, J., *dubitante*) that, in the case of an application for the execution of a decree under—time runs from the date when notice is actually issued under S. 248, C.P.C., and not from the date of the order of the Court to issue such notice (a). **Rattan Chand Oswal v. Deb Nath Barua**, 10 C.W.N. 308 = 4 C.L.J. 580.

References.—(a) 6 C.W.N. 666 F., 27 B. 622 and 28 B. 41C, *not F.*

Limitation Act (XY of 1877).—(Concluded).

(147) Art. 179, cl. 5—*Execution of decree or order—“Date of issuing notice” meaning of—Civ. Pro. Code, S. 248.*

For the purposes of Art. 179, cl. 5, the date of issuing a notice under S. 248 of the Code is, in the absence of express legislative provision to the contrary, the date of the *actual* issue of the notice, and not the date of the order directing notice to issue. **Cheravath Parkum Thalungal Bappu v. Nelloth Parkum Thalungal Kanaran**, 1 M.L.T. 395 = 16 M.L.J. 548.

BODDAM and WALLIS, JJ.

References.—6 C.W.N. 656, 10 C.W.N. 309, F.; 23 B. 35, R; 27 B. 622, 28 B. 416, A.W.N. (1881), 147, *Diss.*

Limitation Act (Punjab.)

Sec ACT I OF 1900 (PUNJAB).

Limitation Regulation (Travancore).

(1) *Minor male member of a Tarwad whether entitled to the benefit of S. 7 of, in the presence of female manager during minority.*

Plaintiff sued to recover, from the defendants, an elephant belonging to him *Tarwad* alleged to have been fraudulently taken away by them while plaintiff was a minor. In reply to the defendant's plea of bar by limitation, it was urged, on behalf of the plaintiff, that S. 7 of the Limitation Regulation saved his suit from limitation. *Held*, on appeal, that, in the presence of an adult female manager with full powers of management in respect of the *Tarwad* properties, during the plaintiff's minority, he could not be held entitled to claim the benefit of S. 7 and his suit, having been brought more than three years after the date of the cause of action, was clearly barred by limitation. **Aiyappan Keshavan v. Kanakku Nilakantan Govindan**, 21 T.L.R. 174.

GOVINDA PILLAI, OFFG.C.J., & PADMANABHA AIYAR and KAPEN, JJ.

References.—4 T.L.R. 34, 12 T. L. R. 99 & 12 T.L.R. 87, R.

(2) *S. 14, para 2, time occupied in wrong Court by plaintiff in good faith, whether could be excluded in his favor.*

In this case, the Munsiff found that the plaint was under-valued and returned it to be filed in the District Court. The District Judge was of opinion that the plaintiff had, fraudulently, under-valued the suit and that, therefore, he was not entitled to deduct the

Limitation Regulation (Travancore).—(Continued).

period of the pendency of the suit in the Munsiff's Court, under S. 14 of the Limitation Regulation, and, accordingly, dismissed the suit as barred by limitation. *Held*, because, in having filed the suit and conducted the same in the Munsiff's Court, the plaintiff had clearly acted in good faith, in computing the period of limitation for his suit, the time between the filing of the plaint in, and the return of it from, the Munsiff's Court must be excluded under the said section. **Chenni Makotha v. Atohutan Kunju Panikan**, 21 T. L. R. 219.

GOVINDA PILLAI, OFFG. C.J., & RAMACHANDRA ROW and EAPEN, JJ.

Reference :—18 M. 269 (271), R.

(3) *Art. 7, whether applicable to suit based on title.*

Where the objectors to a delivery, under S. 321 of the Civ. Pro. Code (Travancore), had brought a purely possessory suit to "establish right to present possession" but the suit was dismissed and the present suit was subsequently brought by them on a cause of action based on their title, *held*, that the latter suit brought on title was not governed by Art. 7 of the Limitation Regulation and was, therefore, not barred. **Kunjan Narayanan v. Kunjan Velayudhan**, 21 T.L.R. 188.

GOVINDA PILLAI, OFFG., C.J., and RAMACHANDRA ROW and EAPEN, JJ.

Reference :—2 A. 94, F.

(4) *Promissory note, not fixing time nor payable on demand, suit on, applicability of Art. 97 of the Regulation to.*

This was a suit on a pro-note payable to 'obligee or order or bearer'. The lower Court dismissed the suit holding that it fell within Art. 65, which allows a period of three years from the date fixed for payment, for suits on instruments not otherwise expressly provided for. On appeal, it was urged, that the suit was within time, since the proper article applicable to the case was Art. 97 and not the residuary Art. 65, which would have application only in cases not falling within any of the other specific articles. *Held*, the legal effect of a pro-note payable to bearer or which fixes no definite date for payment is, to make the note one payable on demand, though not expressly described as such. Such a pro-note will, therefore, fall within the express provision of Art. 97, which provides, a period of 6 years and the decision of the lower Court,

Limitation Regulation (Travancore).—(Concluded).

that Art. 65 was applicable and so the period of limitation for the suit was three years, could not be upheld. **Annamalayappa Pillai Channia Pillai v. Ramasastriar Venkataswalam Iyan**, 21 T.L.R. 194.

GOVINDA PILLAI & RAMACHANDRA ROW, JJ.

Reference :—3 Q. B. D. 578, R.

Lis pendens.

(1) *First suit for pre-emption—Application by a third party to be made co-plaintiff rejected—Suit by such party for pre-emption against vendee alone without making plaintiff in first suit party—Decree in second suit vitiated by doctrine of—*

A suit for pre-emption was filed against the vendee of a house. During the pendency of the suit, one H sought to be made a co-plaintiff on the ground that he was also entitled to pre-emption; but his petition was rejected. He then filed a suit, before the termination of the first suit, for pre-emption against the vendee alone as a party, the plaintiff in the first suit not being a party, and obtained a consent decree for pre-emption and secured possession of the house. The first suit was decreed thereafter and, in execution, the plaintiff-decree, holder got possession by ejecting the plaintiff in the second suit, who now instituted the present suit against the plaintiff in the first suit, for possession. *Held*, the plaintiff in the second suit having had notice of the pendency of the first suit and not having made the plaintiff therein party to his suit (the second suit), and the decree in the second suit having been oblique, the decree in the second suit was vitiated by the doctrine of *lis pendens*. **Harnam Singh v. Jiwan**, 7 P.R. 1906=56 P.L.R. 1906.

CLARK, C.J.

(2) *Transfer of Property Act, S. 52, applicability of, to transfer during pendency of a suit subsequently compromised—See TRANSFER OF PROPERTY ACT, No. 20, 1 M.L.T. 145.*

(3) *Purchase before passing order absolute for foreclosure is purchase pendente lite.—See TRANSFER OF PROPERTY ACT, No. 27, 3 A.L.J. 675.*

(4) *See TRANSFER OF PROPERTY ACT, S. 52.*

(5) *Contentious suit, what is a—See TRANSFER OF PROPERTY ACT, No. 24, A.W.N. (1906), 250.*

See, also, I, 663 & 664; and Administration Suit, No. 1; Mortgage (Redemption), No. 12; Pre-emption, No. 28.

Local Government.

See I, Civil Pro. Code, No. 242.

Local Inspection.

(1). — *by Judge—Omission to place on record result of investigation—Non-service of notice to parties—*

With a view to a better understanding of the evidence on record and to clear up some doubtful point, a Judge visited the spot in dispute and observed the local character of the building to which a portion of the case related. He did not place the result of his inspection and observations separately on the record of the suit; nor did he give the parties any notice of his intended local inspection nor did he hear the arguments of parties during, or after, the inspection. *Held*, a Judge is at liberty to inspect the property in dispute and inform himself, by the observation of his senses, of matters, which may help him in understanding the evidence and in deciding the case, and especially in deciding such matters as do not require scientific knowledge (a). *Held*, that notice to the parties of the intended local inspection is not essential. *Held*, also, that, though it is generally desirable that the result of the investigation should be placed on record, the omission in this case was not very material, seeing that no miscarriage of justice resulted and that the observations were embodied in the judgment. *Moran v. Bhagbat Lal Saha*, 83 C. 138.

PRATT and BODILLY, JJ.

References.—(a) 9 C. 363, 1 C.W.N. 682, R.

Lord Canning's Proclamation of 1858.

(1) *Nazul, land decreed in favour of—Settlement decree—Confiscation of land in Oudh—Abadi land in the city of Lucknow obtained by Nazul under a Settlement decree, renunciation of right of Government, as to—Financial Commissioner's letter of August 7th, 1868.*

The plaintiff claimed title through one S, who was recorded, at the first regular settlement in the *khasra* of the *abadi* of village Khalispur known as Mohalla Hasanganj in the city of Lucknow, as the owner and occupant of a house, which then stood on the plot in suit. His case was that, after the general confiscation of 1858, the Government abandoned its rights thereunder throughout the city of Lucknow including Hasanganj. He relied upon a *Rubkar* or docket of the Financial Commissioner of

Lord Canning's Proclamation of 1858.—(Concluded).

August 7th, 1868, to the effect that land occupied by, or appurtenant to, a house in the city of Lucknow, should not be recorded as *Nazul* property, but be considered to be the property of the owner of the house. The defence was that Khalispur was not part of the city of Lucknow and the *abadi* land thereof had been decreed by the Settlement Court in 1867 to the Lucknow Municipality representing the *Nazul* Department against certain claimants. The *abadi* portion of the village was entered in the *khiwat* as "*patti Nazul Sarkar*," The Settlement Officer acting on the Financial Commissioner's docket of August 7th, 1868, made extensive alterations in the records of the city, but Khalispur or Hasanganj was not included in the survey of the city proper and no alteration was made in the records relating to it, in consequence of the said docket. The *wajib-ul-ars* prepared in 1870 re-affirmed the right of the *Nazul* Department to Khalispur under the settlement decree of 1867.

Held, that the Financial Commissioner's docket of August 7th, 1868, could not be treated as a renunciation of the rights of Government in the *abadi* of Khalispur, and that the plaintiff had no title to the plot in suit. *The Secretary of State for India in Council v. Babu Tarni Prasanna Roy*, 9 O. C. 249.

CHAMBER, J. C.

Reference.—4 C. 727, R.

Lower Burma Courts Act.

Ss. 2 (b), 30—*See I, 664, No. 1.*

(1) S. 31 (2)—*Power of District Judge to direct disposal of certain suits by Additional Judge—S. 57, Civ. Pro. Code, applicability of—*

Under S. 31 of the Lower Burma Courts Act, a district Judge can direct that all suits arising within Municipal limits which may be instituted in the Township Court shall be disposed of by the Additional Judge but, in such a case, if a plaint be presented to the Judge of the Court, he should not return the plaint in order to be presented to the Additional Judge of the same Court, S. 57 of the Code of Civ. Procedure having no application. *Maung Gyi v. Lu Pe*, 3 L.B.R. 120.

IRWIN, J.

Lower Burma Town and Village Lands (Burma Act IV of 1898).

(1)—*Suit for possession of state lands by Secretary of State—whether within the jurisdiction of a Civil Court.*

On his appeal from a decree obtained by the Secretary of State for India in Council for possession of certain state lands in the Government Cantonment, the question arose, whether in view of the provisions of the Burma Act IV of 1898, the suit was within the "jurisdiction of a Civil Court. It was conceded on both sides, that, if the land was in either a town or a village, the Civil Court could have no jurisdiction. The sole question that had to be determined, therefore, was whether the land was in a town or a village as defined in the Act. *Held*, if the land in suit was not in a town, it must be in a village, which has been defined in the Act as an area appropriated to dwelling places not included within the limits of a town. It followed, therefore, that the land must be either in a town or in a village and, consequently, the suit relating to it could not fall within the jurisdiction of the Civil Court. **Moment v. The Secretary of State for India in Council**, 3 I.L.B.R. 165.

ADAMSON, C.J. & FOX, J.

Ss. 11, 15 and 41—See I, 665, No. 1.

Lunacy.

See HINDU LAW (INHERITANCE), No. 4 A.W. N. (1905), 265.

Lunatic.

See I, Act XXXV of 1858 (Lunacy), No. 2.

Lunatics Act.

—See ACT XXXV OF 1858.

Madras Hereditary Village offices Act.

See ACT III OF 1895 (MADRAS).

Madras Rent Recovery Act.

See ACT VIII OF 1865 (MADRAS).

Madras Revenue Recovery Act.

—See ACT II OF 1864 (MADRAS).

Magistrate.

Movable property delivered to defendant under erroneous order of,—*Suit to recover same by true owner—Limitation—See LIMITATION ACT, No. 48-a, 1 M.L.T. 397.*

Mahomedan Law.

1.—ACKNOWLEDGMENT.

2.—ADOPTION.

3.—ALIENATION.

4.—DIVORCE.

5.—DOWER.

6.—ESCHEAT.

7.—FAMILY ARRANGEMENT.

8.—GIFT.

9.—GUARDIANSHIP.

10.—INHERITANCE.

11.—LEGITIMACY.

12.—MARRIAGE.

13.—MINOR AND GUARDIAN.

14.—PRE-EMPTION.

15.—RESTITUTION OF CONJUGAL RIGHTS.

16.—SALE.

17.—SUCCESSION.

18.—TRUSTS.

19.—WAKF.

20.—WILL.

—1—(Acknowledgment).

See, I, Mahomedan Law (Legitimacy), No. 1.

—2—(Adoption).

See, I, 666.

—3—(Alienation).

(1) *Koreshtis* of Jhelum District whether governed by—or by the customary law of the agricultural tribes in a matter relating to alienation of land—See CUSTOM (PECULIAR TO PUNJAB), No. 5, 5 P.L.R. 1906.

(2) *Natural guardian, extent of power of, to alienate minor's property.*

This was a suit brought by a Mahomedan widow, for the purpose of setting aside a decree upon a hypothecation bond, that had been executed by the second defendant, her eldest son, to the first defendant. The latter resisted the suit on the ground that the debt was incurred by his debtor for purposes of a family trade carried on by him. *Held*, in order to authorise an alienation by the guardian of a Mahomedan minor, there must be an absolute necessity or it must be for the clear benefit of the minor. The senior co-heir in a family, governed by the Mahomedan Law cannot claim the same position as that of a manager in a Hindu family. So, though a sale made by such a co-heir, in possession of the whole

Mahomedan Law.—(Continued).**3.—(Alienation).—(Continued).**

estate, to discharge debts of the deceased owner is valid, yet the same principle cannot be applied to alienations for other family purposes. *Held*, therefore, since under the circumstances of the present case, there was no evidence to show that the minor children of the plaintiff were benefited by the trade, which the second defendant was carrying on, the alienation by him could not be regarded as binding the other minor children of the plaintiff. **Minakshinatha Pillai Sankarapandia Pillai v. Kuncha Ummal Kathija Ummal**, 21 T.L.R. 228.

PADMANADHA AIYAR & RAMACHANDRA ROW, JJ.

References:—6 T.L.R. 23, 26 M. 794, 20 B. 116 & 11 C. 417, R; 15 T.L.R. 127, D.

(3) *Alienation of minor's property by mother—Guardian, legal and de facto—Minor, benefit of—Justice, equity and good conscience—Second appeal, questions of fact and law—*

Per RAMPINI, J:—Whether a certain sale was for the benefit of minors or not is a question of fact, and the finding of the District Judge is conclusive on this point.

Per WOODROFFE, J: The question can be dealt with in second appeal. The facts must be accepted as found, but the question whether, assuming the facts to be true, the sale did or did not bind the minors is another matter, which can be dealt with.

Per Curiam:—In the present case the sales were unquestionably for legal necessity and for the benefit of the minors.

Although, under the Mahomedan Law, a mother is not the legal guardian of the property of her minor children, yet when she, as in the present case, as the *de facto* guardian, transfers such property actually for the maintenance of the minors, and for other necessary purposes, manifestly to the benefit of the children, such transfer is binding on the minors.

Per WOODROFFE, J:—Even if there were no such rule in Mahomedan Law, it would be enforceable as one of justice, equity and good conscience. The law relating to guardians is one which exists for the benefit of minors, and it would be inconsistent and unjust to set up that law to defeat a transaction which, in every respect, fulfills its object. **Mafuzzul Hossain v. Basid Sheikh**, 4 C.L.J. 495 = 11 C.W.N. 71.

RAMPINI and WOODROFFE, JJ.

Mahomedan Law.—(Continued).**3.—Alienation.—(Concluded).**

References:—(a) 1 A. 533 and 26 A. 22, F. 17 W. R. 239, R. 29 C. 473, 11 C. 417 & 20 B. 116, *Distgd*.

4.—(Divorce).

(1)—*Talak-i-bain by one pronouncement in the absence of wife—Communication of divorce—Marzul-mant—Death of the husband before expiration of period of iddat.*

A Mahomedan, belonging to the Hanafi Sunni sect, taking with him two witnesses, went to the Kazi and there pronounced but once the divorce of his wife in her absence. He had a *talaknama* written out by the Kazi, which was duly signed and attested. Steps were then taken to communicate the divorce and make over the *iddat* money to the divorced wife, but she declined to accept both.

Held, that the fact that the pronouncement was not made actually to his wife but in her absence to the Kazi and the witnesses, did not vitiate the divorce.

Held, also, that the fact that pronouncement was made only once and not thrice, did not also affect it. The triple repetition is merely one of the many forms, by which a *talak-i-bain*, (irrevocable divorce) can be effected, and the same result can be attained by any other words apt for the purpose and so understood.

Held, further, that a *bain talak* reduced to manifest and customary writing, as in this case, took effect immediately on the mere writing.

In order to establish *mar-ul-maut* (death illness) there must be present at least three conditions:

(1) proximate danger of death, so that there is, as it is phrased, a preponderance (*ghaliba*) of *Khauf* or apprehension, that is, that at the given time death must be more probable than life;

(2) there must be some degree of subjective apprehension of death in the mind of the sick person;

(3) there must be some external indicia, chief among which would be the inability to attend to ordinary avocations.

Where an irrevocable divorce has been pronounced by a Mahomedan husband in health and he dies during the period of the discarded

Mahomedan Law.—(Continued).**-1.-Divorce.—(Concluded).**

wife's *iddat*, she has no claim to inherit to the husband. *Sarabai v. Rabiabai*, 8 Bom. L.R. 85=80 B. 587.

BACHELOR, J.

- (2)—*by the wife, conditions of—Kabinnama, clause in, validity of—Condition emanating from the husband—Restitution of conjugal rights, suit for, by the husband.*

A condition in a *kabinnama* empowering the wife to pronounce *talak* on the failure of the husband to deliver certain ornaments to her on demand, is valid, even though the condition emanated from the husband, when insisted upon by the wife. *Nuruddin v. Mussummat Chenuri*, 8 C.L.J. 49.

GHOSE and HOLMWOOD, JJ.

References.—8 C. 327; 16 W.R. 260 and 7 B.L.R. 442, F.

See, also, I, Mahomedan Law (Legitimacy), No. 2.

—5.—(Dower).

- (1) *Widow in possession in lieu of—Redemption in part by heirs—Interest—Accretion—Just allowance.*

When the widow of a deceased Mahomedan has been actually in sole possession of her husband's property in lieu of her dower, she is entitled to hold that property against the other heirs until her entire claim for dower is satisfied; and the heirs cannot redeem the property piecemeal (a).

Although the plaintiff claimed to redeem her share, she may be allowed in that suit to redeem the whole.

Where the dower is fixed at a sum very much larger than the value of the entire estate belonging to the husband, the widow is not entitled to claim interest on the dower (b).

Properties purchased by the widow, after husband's death and with the income of his property in her possession, are accretions to that estate, but, in preparing the accounts, she must be debited only with the usufruct and not also with the cost paid out by her.

In taking accounts, the widow is entitled to all just allowances, such as money spent in the interest of the estate and marriage of her daughter. *Bakreedan v. Ummatul Fatema*, 8 C.L.J. 541.

PRATT and GRIND, JJ.

Mahomedan Law.—(Continued).**—5.—(Dower).—(Concluded).**

References.—(a) 10 W.R. 369, 14 M.I.A. 377, F. (b) 26 C. 965, D.

(2) Right of a widow in possession of her husband's property in lieu of dower to maintain a suit for partition—*See ACT III of 1901 (N.W.P. TENANCY), No. 4, 8 A.L.J. 481.*

(3) Suit for restitution of conjugal rights—Necessity for payment of prompt dower—*See RESTITUTION OF CONJUGAL RIGHTS, No. 1, A.W.N. (1906), 196.*

(4) Non-payment of—is no defence to an action for restitution of conjugal rights—*See MAHOMEDAN LAW (RESTITUTION OF CONJUGAL RIGHTS), No 1, 7 Bom. L.R. 684.*

See, also, I, Civil Pro. Code, No, 38.

—6.—(Escheat).

See, I, 666.

—7.—(Family arrangement).

- (1)—*Specs successionis—Transfer—Transaction in the nature of a family arrangement—Pardanishin lady—Deed taken from her.*

Under the Mahomedan Law a mere *specs successionis* cannot be the subject of a valid transfer. But this principle does not affect a transaction, in the nature of a family arrangement, by which the father makes immediate provision for his daughter, to take effect both in his lifetime and after his death in consideration of the daughter agreeing not to claim her legal share as heir on his death.

Whether such a transaction should be set aside as inequitable depends upon circumstances at the time it was made, not upon subsequent events (a).

The law requires that, in the case of a deed taken from a *pardanishin* lady, the Court must be careful to see that the lady, executing the deed has been a free agent and duly informed of what she is about; that the deed was explained to, and understood by, her. *Shamsuddin v. Abdul Hossain*, 8 Bom. L.R. 252.

* CHANDAVARKAR, J.

References.—(a) 28 C. 15 and 4 M. and G. 909 (976), F.

(2) The plaintiff and the defendant, the former being the mother-in-law of the latter, passed a document whereby they relinquished their shares in certain property in favour of the two sons of the defendant,

Mahomedan Law.—(Continued).**7.—(Family arrangement).—(Concl'd.)**

Held, that the transaction was not a mere voluntary settlement, but was supported by valuable consideration, because the relinquishment by one was consideration for relinquishment by the other (*a*). **Ashidbai v. Abdulla Haji Mahomed**, 8 Bom. L.R. 652.

CHANDAVARKAR, J.

References.—(*a*) 29 B. 333=7 Bom. L. R. 477, F.

8.—(Gift).

(1) *Transfer of possession—Donor and donee living in the same house, the subject of the gift—Evidence.*

It is not necessary according to Muhammadan Law that, in all cases where a gift of immovable property is made, the donor should actually and physically vacate the property, the subject of the gift. Where the gift was of a house and other immovable property, and was made by registered instrument and attended by circumstances of great publicity, the fact that the donor, who has the aunt of the donee never quitted the house, but continued to reside in it with her nephew, was *held* to be of no effect in the face of the clearly manifested intention of the donor to transfer possession of the house to the donee. **Humera Bibi v. Najman-nissa Bibi**, A. W. N. (1905), 222=2 A. L.J. 778 =28 A. 147.

STANLEY, C. J. and BURKITT, J.

Reference.—0 B. 146, F.

(2) Arian.

A Mahomedan caused mutation of names in respect of certain property to be effected in favour of his wife, and at the same time presented a petition to the Revenue Court stating that he had transferred his rights and interests to his wife, Habib-un-nissa, and made her his *locum tenens*, but that she had no power to transfer the property in any way, and that she would continue to hold and possess the share for her life; but he executed no formal transfer of the property to his wife. *Held*, this was not gift, but merely an *arian*, and invalid according to the Mahomedan law. **Mumtas-un-nissa v. Tufail Ahmad**, A.W.N. (1905), 269=28 A. 264.

BARRETT and RICHARDS, JJ.

(3) *Forms to be observed—Proof of—Onus—Gift with consideration—Simple gift—Pos-*

Mahomedan Law.—(Continued).**9.—(Gift).—(Concluded).**

session, delivery of—benami transaction—Suit to set aside.

By the Mahomedan Law, a holder of property may, in his lifetime, give away the whole or part of his property if he complies with certain forms; but it is incumbent upon those, who seek to set up such a transaction, to show very clearly that those forms have been complied with. It may be by deed of gift simply or by deed of gift coupled with consideration. If the former, unless accompanied by the delivery of the thing given, so far as it is capable of delivery, it is invalid. If the latter (in which case delivery of possession is not necessary), actual payment of consideration must be proved and the *bona fide* intention of the donor to divest himself in *presenti* of the property, and to confer it on the donee, must be proved (*a*).

Held, that, in this case, the deed executed by the plaintiff in favour of the defendant, although purporting to be a conveyance for value, was a transaction in which no consideration passed or was intended to pass; that, in executing the deed, the plaintiff did not intend to give the property to the defendant except subject to a reservation of the possession and enjoyment to himself and his wife during their lives, to which the defendant pledged himself, and that the deed was not followed by delivery of possession, but was a fictitious and *benami* deed and was invalid and void. **Chaudhri Mehdi Hasan v. Muhammad Hasan**, 10 C.W. N. 706 (F.C.)=8 A.L.J. 405=8 Bom. L.R. 387 =28 A. 439=9 O.C. 106=1 M.L.T. 163=4 O.L. J. 295.

LORD MACNAGHTEN, SIR FORD NORTH,
SIR ANDREW SCOBLE and SIR ARTHUR
WILSON.

Reference.—(*a*) 3 I.A. 201, R.

See, also, I, 666-669.

10.—(Guardianship).

(1) Power of a Mahomedan mother to deal with property of her minor children as their guardian—*See* MAHOMEDAN LAW (SALE), No. 1, 9 O.C. 97.

(2) *Act VIII of 1890 (Guardians and Wards, S. 10—Guardians and minor—Paternal uncle or mother.*

Mahomedan Law.—(Continued).**9.—(Guardianship).—(Concluded).**

The paternal uncle has no legal right under the Muhamedan law to the guardianship of the property of his minor nephews and nieces in the life-time of their mother. **Alimullah Khan v. Abadi Begam**, A.W.N. (1906), 256.

BANERJI and AIKMAN, JJ.

Reference.—6 W.R. M.R. 125, R.

(8) Power of, under Mahomedan Law, to alienate minor's property—See MAHOMEDAN LAW (ALIENATION), No. 2, 21 T.L.R. 223.

10.—(Inheritance).

(1) Half-brother no heir—See MAHOMEDAN LAW (WILL), No. 1, 8 A.L.J. 181.

(2) Direction by a Shia in his will that his wife should have a life-interest in certain property for her maintenance and that she should not alienate the same—When succession opens—Competition between uncle and nephews—See MAHOMEDAN LAW (WAKF), No. 3, 3 A.L.J. 387.

(3) Right of a sister of a deceased occupancy tenant to succeed to a share—See OCCUPANCY RIGHTS, No. 2, 52 P.R. 1906.

11.—(Legitimacy).

(1) Acknowledgment of paternity—Recognition of sonship.

Held, that, under the law, a child need not necessarily be considered legitimate, merely because his parents lived together for a certain period and his father called him his son. Held, also, that a mere recognition of sonship is not necessarily sufficient to effect the legitimation of a son. **Raunak Bakhsh Khan v. Roshan Zaman Khan**, 9 O.C. 246.

CHAMBER and EVANS, J. CS.

References.—F.C.A. No. 38 of 1905 and 21 C. 606 (P.C.), R.

See, also, I, 669-670.

12.—(Marriage).

(1) *Kabinnama* between husband and wife at the time of—Power given to wife to pronounce *talak* on husband's failure to fulfil certain conditions—Divorce by the wife, validity of—See MAHOMEDAN LAW (DIVORCE), No. 2, 8 C.L.J. 49.

(2) Dissolution of—wife's conversion to Christianity, effect of, on decree for recovery of wife.

Mahomedan Law.—(Continued).**12.—(Marriage).—(Concluded).**

The plaintiff obtained a decree for custody of the defendant's person as his wife. He applied for execution, and was met by the objection that the defendant had embraced Christianity, whereby the marriage was dissolved and she was no longer the plaintiff's wife. The question for decision being whether the wife's conversion dissolved the marriage tie, held, that the conversion did effect a complete dissolution of the marriage. **Imam Din v. Hasan Bibi**, 85 P.R. 1906. = 148 P.L.R. 1906.

REID and CHATTERJI, JJ.

References.—134 P.R. 1884, 61 P.R. 1899, 2 N.W.P. 370 and 124 P.R. 1876 (F.B.), F.

13.—(Minor and Guardian).

Transfer of minor children's property by mother, as guardian, validity of—See MAHOMEDAN LAW (SALE), No. 1, 9 O.C. 97.

14.—(Pre-emption).

(1) *Talab-i-istishhad*—Witnesses not specifically invoked.

The mere fact that the *talab-i-istishhad* is made in the presence of certain persons, who happen to be present at the place where it is made is not sufficient to make the demand a good one unless those persons are specifically called upon to bear witness to the demand being made. **Ganga Prasad v. Ajudhia Prasad**, A.W.N. (1905), 167 = 2 A.L.J. 682 = 28 A. 24.

BANERJI and RICHARDS, JJ.

Reference.—W.R. (1864), 351, F.

(2) *Shafi-i-khalit*—Easement—Owner of dominant tenement.

Under the Mahomedan Law of pre-emption the owner of the dominant tenement has, in respect of a sale of the servient tenement, a right of pre-emption as a *shafi-i-khalit*, which is preferable to the right of one who is merely a neighbour as regards the property sold. **Karim v. Priyo Lal Bose**, A.W.N. (1905), 217 = 2 A.L.J. 619 = 28 A. 127.

BANERJI, J.

References.—N.W.P.H.C. Rep. (1874), 377 and 3 B.L.R.A.C. 296, *Refd to*.

(3) Pre-emption—*Wajib-al-ars* silent as to nature of custom—No allegation as to nature of custom in plaint—Applicability of Mahomedan Law—See PRE-EMPTION, No. 5, 2 A.L.J. 482 = A.W.N. (1905), 190.

See, also, I, 671-672.

Mahomedan Law.—(Continued).**——15.—(Restitution of Conjugal Rights).**

- (1) *Dower—Consummation of marriage—Restitution of conjugal rights.*

After consummation of marriage, the non-payment of dower, even though proved, cannot be pleaded in defence of an action for restitution of conjugal rights (a). **Bai Hansa v. Abdalla Mustafa**, 7 Bom. L.R. 684 = 30 B. 122.

JENKINS, C.J. and ASTON, J.

References.—(a) 8 A. 149; 11 M. 327; 17 C. 670, F.

See, also, I, 672.

——16.—(Sale).

- (1)—*Mother, transfer of her minor children's property by, validity of—Void sale—Power of transfer by a Mahomedan mother—Mother—Guardian.*

Held, that, under the Mahomedan Law, a mother has no power to deal with the property of her minor children and, therefore, a sale by her of their property conveys no title to the purchaser. **Amba Shankar v. Ganga Singh**, 9 O.C. 97.

CHAMBER and WELLS, J. CS.

References.—8 A. 324, 20 B. 199, 5 O. C. 197, 20 M. 794, 20 C. 473, P.R. (1889), 681, 26 A. 22, 1 A. 533 and 1 A. 57, R.

- (2) *Sale by Mahomedan mother, as guardian of a minor, of the minor's property, if void—Sale for benefit of the minor—sale, validity of, who can impeach—Voidable—Mother, if legal guardian of the property of her minor children under Mahomedan law—Guardian, de facto.*

Although, under the Mahomedan Law, a mother is not the legal guardian of the property of her minor children, yet when she, acting as the *de facto* guardian, purports to deal with the minor's property, and such transaction is for the benefit of the minor, it is difficult to say the transaction, in the absence of fraud or any other element of that nature, ought not to stand, (a). **Ram Charan Sanyal v. Anukul Chandra Acharya**, 4 C.L.J. 578.

MACLEAN, C.J., & CASPERSZ, J.

References :—(a) 4 C.L.J. 485, F. 1 A. 533 & 26 A. 22, R. 29 C. 473, *Expl. and D.* 11 C. 147 & 20 B. 116, D.

Mahomedan Law.—(Continued).**——17.—(Succession).**

- (1) *Succession—Grand-children by predeceased son—Evidence Act, S. 108—Presumption of death of missing person—Onus—Missing heir reservation of, share of, upon partition.*

Under the Mahomedan Law, if any of the children of a man die before the opening of the succession to his estate, leaving children behind, these grand-children are entirely excluded from the inheritance by their uncles and aunts.

A, the son of H, a Mahomedan, disappeared as a mendicant in 1870, and was not known to have been either seen or heard of since then; H died in 1884; a claim was set up by C, the son of A to share in the estate of H; it was held that under S. 108 of the Evidence Act, the onus was upon C to prove that his father, A, had survived his grandfather, H.

It was held, further, that this onus was not discharged by proof that, in an arbitration-award made in 1888, a share had been set apart for A, because this was consistent with the principle of Mahomedan Law, that a share ought to be reserved for a missing heir. **Moolla Cassim v. Moolla Abdul Rahim**, 2 C.L.J. 236 (P.C.) = 15 M.L.J. 317 = 7 Bom. L.R. 892 = 2 A.L.J. 798 = 10 C.W.N. 33 = 33 C. 173 = 32 I.A. 177.

LORD DAVEY, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

- (2) *Transfer of Property Act (IV of 1882), S. 6 (a)—Spec Successionis—Non-transferable and non-releasable—Deeds executed by pardanishin ladies—Burden of proof.*

The chance of an heir-apparent succeeding to an estate is neither transferable nor releasable according to Mahomedan law. It is only by an application of the principle that equity considers that done which ought to be done, that such a chance can, if at all, be bound.

It was not intended by S. 6 (a) of the Transfer of Property Act, 1882, to establish and perpetuate the distinction between that which, according to the phraseology of English lawyers, is assignable in law and that which is assignable in equity. The exception in cl. (a) cannot be by reason of the future character of the chance; it must be because it was thought undesirable that it should be capable of transfer.

Mahomedan Law.—(Continued).

———17.—(Succession).—(Concluded).

In the case of deeds executed by *pardanishin* ladies it is requisite that those who rely on them should satisfy the Court that they had been explained to and understood by those who executed them (a). **Sumsuddin Gulam Hossain v. Abdul Hossain Kallmoedin**, 8 Bom. L.R. 781.

JENKINS, C.J. AND BRAMAN, J.

References:—(a) 8 I.A. 80 and 20 C. 749, *F.* 8 Bom L.R. 252, *R.*

See, also, I, 673; and Act I of 1869 (*Oudh Estates*), No. 1.

———18.—(Trusts).

See I, *Mahomedan Law (Gift)*, No. 1.

———19.—(Wakf).

- (1) *Wakfnamah, suit for setting aside—Substantial dedication—Intention of wakf—Illusory trust—Delivery of possession of wakf property to mutwalli—Evidence to show that there was no intention to give effect to trusts and that trusts were in fact not given effect to, relevancy of—Wakf of shares in a company, if valid.*

In a suit for setting aside a *wakfnamah* on the ground that the trusts are illusory and that there has been no substantial dedication to religious and charitable trusts, the question before the Court is whether there was a real intention to give effect to the document as a *wakfnamah*. The intention of the settlor must be gathered from the document itself. If the *wakf* was formally constituted and perfected and established by its terms a substantial charitable trust, it is wholly immaterial whether its provisions were carried out or not, for that is a matter of breach of trust only. Evidence given to show that it was never intended to be given effect to the trusts and that in fact they were not given effect to, is irrelevant in such a suit. Evidence, however, showing the manner in which the document is related to existing facts, e.g., the value and state of the *wakf* properties, is relevant.

According to Mahomedan Law, a *wakf* cannot be created of shares in a company. **Kulsom Bibee v. Gulam Hossain Cassim Adiff**, 10 C. W. N. 449.

WOODBUFFE, J.

References.—9 C.L.R. 66, *F.* Appeal from O. D. No. 110 of 1900, 10th June, 1902, *Diss.* 9 C. at p. 807, *R.*

Mahomedan Law.—(Continued).

———19.—(Wakf).—(Continued).

- (2)—*Maintenance to the settlor's family out of the income of the trust property—Revocation—Complete appropriation and dedication.*

The mere charge upon the profits of the estate of certain items, which must, in the course of time, necessarily cease being confined to one family and which, after they lapse will leave the whole property intact for the original purposes for which the endowment was made does not render the endowment invalid under the Mahomedan Law. The question in every case is whether the gift to the charity is of an illusory or a substantial character (a).

According to the Mahomedan Law of *wakf* the appropriation and dedication in favour of charity must be at the time such appropriation or dedication is made so complete that it should not be in the power of the donor or settlor to recall it ever afterwards. It should be such that no proprietary interest is reserved by the settlor and the property is effectually and once for all dedicated to charity and constituted charity property leaving no power to the settlor to recall the trust and regain the ownership. **Assobal v. Noorbal**, 8 Bom. L.R. 245.

CHANDAVARKAR, J.

References.—(a) 18 W.R. 285 and 22 C. 619 (*F.C.*), *F.*

- (3) *Shia School—Testamentary Wakf—Doctrine of Tanjiz—Contingent revocable wakf of income, validity of—Inheritance—Life estate interposed—Vested remainder.*

Since a valid testamentary *wakf* can be created by a Shia, the reservation by the testator of a right to alter the will does not render the *wakf* invalid.

Where the passing of the property of the endowment is made to depend on the occurrence of a future event, which is sure to happen sooner or later, the bequest is valid, *Tanjiz*, i.e., the immediate operation of the transaction, absolute and unconditional, which is indispensable in the case of a *wakf* made by a man in his life has and can have no application to a testamentary *wakf*.

Among Shias, as among Sunnis, the making of a provision for the grantor's family, out of the property dedicated to religious or charitable objects, may be consistent with a property being constituted *wakf*.

Mahomedan Law.—(Continued).**19.—(Wakf).—(Continued):**

The Mahomedan Law prohibits endowments of incorporeal rights or of things which perish in the using. Where a testator only mentions the income of certain property as the endowment, but does not assign the *corpus* to any one else, there is a good *wakf*.

Where a Shia Mahomedan, by will provided that his wife should remain in possession of certain property during her life-time for maintenance, but should not be competent to alienate same, *held*, that the succession opened on the death of the lady and an uncle would then exclude nephews, being children of his brothers, who had survived the testator but predeceased her. **Mahomed Ansan Ali Khan v. Umar-daras Ali Khan**, 8 A.L.J. 387 = A.W.N. (1906), 146 = 28 A. 639.

KNOX and AIKMAN, JJ.

(4) Wakf—Burial ground—Confiscation of village after mutiny of wakf by long user.

Where a valid *wakf* was created before the mutiny by the use for a number of years of a plot of land as a cemetery and subsequently, the rights of the landlords were confiscated in consequence of their action during the mutiny. *Held*, that a *wakf* could be created by long use of the place as a burial ground as well as by actual declaration by the *wakf* and that the purchasers, upon confiscation of the village, could not, by their purchase, obtain any rights in the cemetery plot. **Salig Ram v. Amjad Khan**, A.W.N. (1906), 159 = 3 A.L.J. 546.

BANERJI, J.

(5) Wakf—Suit by heir against mutwalli—Compromise—Recognition of validity of wakf by heir—Right of judgment-creditor of heir to proceed against wakf properties—Priority.

One D executed a *wakfnamah* appointing B *mutwalli*. After D's death, his widow M sued to recover a share of the properties as one of D's heirs. B set up the *wakfnamah* in defence. But the suit was compromised and a *solenamah* was executed in which M admitted the genuineness and validity of the *wakfnamah* and, in consideration of an annuity, stipulated that neither she nor her heirs should ever in future be competent to claim any of the properties covered by the *wakfnamah*, but that if, at the instance of a third party, the *wakfnamah* should be declared invalid, the terms of the *solenamah* would not affect or interfere with her right of inheritance

Mahomedan Law.—(Continued).**19.—(Wakf).—(Continued).**

Previous to the institution of the suit, M had borrowed moneys from the plaintiff. The plaintiff obtained a decree against M for the debt and having failed to execute the same against M's share in the alleged *wakf* properties instituted the present suit for a declaration that he was not bound by the *wakfnamah* or the *solenamah* and that he was entitled to proceed against M's share in the properties in execution of the decree:

Held, that the suit was maintainable as the plaintiff was not bound by the *solenamah*; and that he was entitled to show that the *wakf* was invalid and inoperative (a). **Muhamad Bukht v. Asman Resa**, 10 C.W.N. 560.

GHOSE and PANGITR, JJ.

Reference.—(a) 8 B.L.R. 122, F.**(6) Wakf created by will, not necessarily an operative transaction.**

Plaintiffs, as the heirs of one K, claimed in this suit their share of the properties left by him, while the defendants set up, in answer to the claim, *wakfnamah* alleged to have been executed by K. The lower appellate Court gave the plaintiffs a decree, holding, by its judgment, that the alleged *wakfnamah* was not intended to, and did not, operate to create a trust, in favour of a mosque, in the property covered by it, so as to exclude the plaintiffs from succeeding to their share or, in other words, the grantor never intended that it should be an operative transaction.

Held, that the above conclusion arrived at by the lower appellate Court was one that could not be interfered within second appeal. *Held*, also, that the contention, for the appellant, that, since the *wakfnamah* was created by a will of K, it could only come into operation upon the death of K and nothing could interfere with its operation after the death of K, could not be upheld because, from the fact that a *wakf* might be created by a will, it would not necessarily follow that it must be an operative transaction. **Abdul Karim v. Shefiannissa**, 33 C. 858.

GHOSE and PANGITR, JJ.

Reference.—25 A. 286 (F.), B.**(7) Mere declaration of the dedication, whether can effect a valid wakf—Necessity of wakf parting with possession of the property.**

Mahomedan Law.—(Continued).**19.—(Wakf).—(Concluded).**

The question for decision in this case was whether, according to the law governing the *Sunni* Muhammadans of the Central Provinces, a mere declaration of a dedicator (*Wakf*) that, he constitutes or has constituted certain property, *wakf* is sufficient to impress on it the character of a valid *wakf*. *Held*, following 15 A. 321, that a *wakf* must divest himself of his own personal possession of the *wakf* property and that a mere declaration of the dedication by him is insufficient to effect a valid *wakf*. **Chandrama Bibi v. Mahomed Isak**, 2 N.L.R. 158.

Drake-Brockman, A.J.C.

References :—20 C.116, 22 C.619, 25 A.286 (255) & 12 W.R.498, R.

(8) *Construction of deed—Dedication of property—Religious and charitable uses—Family aggrandisement—Succession of life-estates—Intention.*

Where by a deed, not intended to take effect during his life-time a Mahomedan professes to dedicate his property to God, but directs that only one-fourth of the proceeds of such property be expended for religious and charitable uses, the remainder being used for the purposes of the family, and where it appears that the true intention of the executant was to tie up the property for family aggrandisement, and to create a succession of life-estates in the so-called *mutualis*, under the garb of *wakf*, such creation being repugnant to Mahomedan Law :

Held, there was no valid *wakf*, but merely a charge upon one-fourth of the property for religious and charitable purposes. **Alamgir Khan v. Kamrunnessa Khanum**, 4 C.L.J. 442.

Ghose and Girdt, JJ.

See, also, I, 673-676 ; and *Mahomedan Law (Legitimacy)*, No. 2.

20.—(Will).

(1) *Will—Construction of document.*

One Muhammad Azim made a will, whereby, after making provision for his widow and daughters, he divided his property between his three sons giving to each certain villages. The gift was *prima facie* absolute, but the will further provided that none of the sons should have a right to alienate the property devised to him, and that, on the death of one of the devisees without issue, his share should go to the survi-

Mahomedan Law.—(Continued).**20.—(Will).—(Continued).**

ing brother or brothers or his or their heirs. The testator died, leaving surviving him three sons, A.Q. and A.K. by one wife, and one son, A.K. by another. The will was assented to by the heirs of the testator, and the three sons entered into possession of their shares. Then A. K. died, and his full brother A. Q. took possession of his share. *Held*, on suit by the half-brother for possession of half the share, that according to the Mahomedan Law the three devisees took absolutely, and the plaintiff's claim could not be maintained. **Abdul Karim Khan v. Abdul Qayum Khan**, A.W.N. (1906), 25 = 8 A.L.J. 181 = 28 A. 342.

Banerji and Richards, JJ.

(2) *Probate, effect of, grant of—Probate and Administration Act (V of 1881), Ss. 4, 12, 59, 88, 90—Heirs, position of—Estoppel—Res judicata, plea of—Evidence necessary to support—C.P. Code, S. 13.*

A plea of *res judicata*, taken on the ground that the questions in issue in the suit were formerly in issue in probate proceedings cannot be given effect to, when the said proceedings, are not in evidence, and there is thus no sufficient evidence to support the plea. A judgment passed in the previous proceedings, showing that the Judge understood to have been the questions for decision in those proceedings, is not enough to support such a plea. The Court cannot give effect to the plea, unless it can say for itself that the matters in issue in the suit were in issue in the previous proceedings.

The power of disposition by will of a Mahomedan testator being limited to a third of his estate, the remaining two thirds pass to his heirs whatever the terms of the will may be. The consequence of a grant of probate of a Mahomedan will, therefore, is that the executor, when he has realised the estate, is a bare trustee for the heirs as to two-thirds, and an active trustee as to one-third for the purposes of the will.

As the heirs claim adversely to the will, the grant of the probate does not create any estoppel, so as to prevent them from putting forward their claim as against a beneficiary under the will. **Nawab Akbari Begum and Mirza Kurratulain Bahadur v. Nawab Nuzhatud-dowla Abbas Husein Khan alias Pear**

Mahomedan Law.—(Concluded).**—20.—(Will).—(Concluded).**

Sahab, 9 C.W.N. 938 (P.C.) = 1 C.L.J. 594 = 2 A.L.J. 768 = 15 M.L.J. 536 = 7 Bom. L.R. 876 = 88 C. 116 = 89 I.A. 244.

LORD DAVEY, LORD ROBERTSON and SIR ARTHUR WILSON.

(3) *Will not required in writing—Signature or mark of testator not proved—Will good if prepared in accordance with instructions.*

According to the Muhammadan Law, a will may be made either verbally or in writing and no special form or solemnity for making or attesting a will is prescribed. It is sufficient if a will can be proved to have been really and truly the will of the testator.

It was found by the District Judge that the will in question was prepared in accordance with the instructions of the testatrix, that it did embody her instructions, but that it was not proved that the mark alleged to be hers was really hers.

Held that the will was a good and operative will.

A will prepared in accordance with the instructions of a testator and to which he expressed approval, believing that his instructions were carried out, would be valid, if the will did embody the instructions (*a*). **Aulla Bibi v. Ala-ud-din, 8 A.L.J. 519 = A.W.N. (1906), 210 = 28 A. 715,**

STANLEY, C.J. and BANERJI, J.

References.—(*a*) 8 P.D. 171 and A.C. 854, R.

(4) *Will by a Shia—Reservation of right to alter will, whether renders will invalid—See MAHOMEDAN LAW (WAKF), No. 3, 8 A. L. J. 387.*

See, also, T; 676-677.

Mahsul.

See I, Act X III of 1900 (Punjab Alienation of Land), No. 2.

Maintenance.

(1) *Right of children to—Legitimacy, proof of—See EVIDENCE ACT, No. 29, 28 P. R. 1906.*

(2) *Whether an annuity is a right to future—See CIV. PRO. CODE, No. 146, 10 C.W.N. 1102.*

(3) *Suit for—by member of a Tawashi—See MALABAR LAW (MAINTENANCE), No. 1, 16 M. L. J. 275.*

(4) *Suit by widow to have her—charged on immovable property—Mortgage pending suit—*

Maintenance.—(Concluded).

Dependence—See TRANSFER OF PROPERTY ACT, No. 28, 16 M.L.J. 418.

(5) *Grant of inam for—Presumption—See INAM, No. 1, 16 M.L.J. 369.*

(6) *Suit for sale on foot of a mortgage of property subject to a charge for—See TRANSFER OF PROPERTY ACT, No. 77, 8 A.L.J. 848.*

See, also, I, Grant, No. 1; Hindu Law (Maintenance) and Mahomedan Law (Maintenance); and Small Cause Courts (Provincial (Act IX of 1887), No. 18.

Maintenance grant.

(1)—*Resumption—Presumption—Alienability—Evidence—Indian Evidence Act (I of 1872), Ss. 13, 35—Judgments in previous cases—Recital of pleadings.*

A maintenance grant is *prima facie* resumable on the death of the grantee, where it is a grant for the maintenance of the younger members of a family, and whether it is in the hands of the more immediate or in those of the more remote members of the family. Whether a maintenance grant is heritable and alienable is in all cases a question of the intention of the parties.

On a review of the entire evidence in this case, it was *held*, that the grants were hereditary but not alienable without the consent of the grantor or his representatives.

It was the practice, in old times, for the Lower Courts in Bengal to set out the pleadings in their judgments and this practice was recognised by Circulars issued by the Sudder Dewany Adalat. Such judgments are, therefore, admissible in evidence under S. 35 of the Evidence Act as an admission by a party. They are also admissible under S. 13 of the Act as instances in which the right in question was claimed and disputed and disallowed (*a*). **Bhaya Dirgaj Deo v. Pande Fateh Bahadoor Ram, 3 C.L.J. 521.**

HENDERSON and GEIDT, JJ.

Reference:—(*a*) 9 C. 586, F.

(2) *Heritability—Presumption.*

A grant for maintenance, *prima facie* ceases with the life of the grantor, and is resumable on the death of the grantee. But this presumption is rebuttable, and, where it is proved that a grant has been enjoyed by successive generations, the inference may justly be drawn that the original grant was intended to be a

Maintenance grant.—(Concluded).

grant in perpetuity. **Ram Chandra Goswami v. Jogenra Nath Banarjee**, 4 C.L.J. 999.

MOOREJEE, J.

References:—5 M.L.A. 82, 5 C. 113, 27 C. 156, 22 W.R. 225 and 4 M. 371, *Appl.*

Majority Act.

See ACT IX OF 1875.

Malabar Law.**—1.—(Gift).**

- (1) *Property given over to a female and her children, liability of, for the debts of one of them deceased—Does whether constituted into a Tarwad.*

When a female and some, or all of her children are given any property by their father or *Karnaran*, they are not thereby constituted into a *tarwad* by themselves. The senior member among them having the rights of the *Karnaran* so far as the other members are concerned. But the donees, in such a case, hold the properties given with the ordinary incidents of *tarwad* property (a) so that, on the death of one of them, his interest in the property passes to the others by survivorship and is no longer available for attachment at the instance of a decree-holder. **Korath Amman Kutti v. Perungottil Appu Nambiar**, 29 M. 322.

MOORE and SANKARAN NAIR, JJ.

Reference. (a) 16 M. 201, R.

See I, 677.

—2.—(Maintenance).

- (1) *Separate maintenance, suit for, by one member of a Tarazhi, whether maintainable.*

On the ground of the insufficiency of the amount set apart for the maintenance of a *Tarazhi* by its *Tarwad*, a particular member of a *Tarazhi* has no right to sue for an award of separate maintenance to himself, but, a suit can be brought by the members of the *Tarazhi* for an increased provision, for the maintenance of the *Tarazhi*, appropriate to the income of *Tarwad*. **Makhi Keyi v. Keloth Mammod**, 16 M.L.J. 275.

BODDAM and MOORE, JJ.

- (2) *Suit by one member of a Tarazhi against another for maintenance, maintainability of—Suit for possession.*

Plaintiff (*Karnaran*) alleged that, the first defendant, his mother's sister, in possession of

Malabar Law.—(Concluded).**—2.—(Maintenance).—(Concluded).**

some of the *Tarazhi* properties, having paid for his maintenance for some time, discontinued doing so. Defendant denied that she ever gave maintenance to the plaintiff or that he was entitled to claim the same from her. *Held*, a suit for maintenance could not be maintained by one member of a *Tarazhi* against another, but, assuming that the plaintiff's contentions were true, he should have sued as *Karnaran* of the *Tarazhi* for the recovery of the property which, according to him, belonged to the *Tarazhi*. **Nambiamuttill Pokker v. Kithakki Kunhipatamma**, 29 M. 226.

DENSON and MOORE, JJ.

Malabar tarwad.

Suit by member of, to set aside *karak* entered into during his minority by adult members of the *tarwad*—Nature of suit—See COURT FEES ACT, (VII OF 1870), No. 39, 1 M.L.T. 412.

Malice.

- (1) The existence or non-existence of—to be chiefly taken into account in deciding whether the noise produced in a legitimate calling amounted to actionable nuisance—See NUISANCE, No. 1, 8 Bom. L.R. 89.

- (2) Want of reasonable and probable cause for the prosecution is some evidence of—in cases for malicious prosecution—See MALICIOUS PROSECUTION, No. 1, 10 C.W.N. 253 (F.B.)

See, also, I, *Libel*, No. 3.

Malicious arrest.

- (1) *Arrest ordered by officer empowered to use Discretion—Information of all the facts given to the officer by defendant—Action for malicious arrest, if maintainable.*

Plaintiff sued defendant for damages for malicious arrest, on a warrant obtained by the latter against the former.

Held, an action for malicious arrest is not maintainable, when the defendant placed all the facts before an officer of the Court empowered to exercise judicial discretion, and such officer ordered the arrest with knowledge of all the facts.

Held, though in an action for false imprisonment, the onus is on the defendant to plead and prove the existence of reasonable cause, in an action for malicious prosecution, the plaintiff must allege and prove its non-existence, affirmatively; the defendant having, in the present

Malicious arrest.—(Concluded).

case, discharged such onus, the appeal must be allowed and the plaintiff's suit dismissed. **Thakdi Hajji v. Budrudin Saib**, 29 M. 208.

WHITE, C. J. and SUBRAHMANYA AYYAR, J.

Malicious prosecution.

- (1) *Malicious prosecution—Want of reasonable and probable cause—Malice—Evidence of malice.*

In cases of malicious prosecution, want of reasonable and probable cause for the prosecution is some evidence of malice.

Malicious prosecution means that the proceedings, which are complained of, were initiated in a malicious spirit, i.e., from an indirect and improper motive and not in furtherance of justice (a). **Sri Nath Shaha v. L.E. Ralli and others**, 10 C.W.N. 253 (F.B.)

MACLEAN, C.J., and SALE and HARRINGTON, JJ.

Reference.—(a) 11 Q.B.D. 455, R.

- (2) *Suit for damages for malicious prosecution—Plaintiff convicted in the first Court and acquitted only in appeal, burden of proof.*

If the plaintiff, in a suit for malicious prosecution, had been convicted in the criminal case by the Court of first instance and acquitted only on appeal, the onus cast on him by the law is specially heavy; for, he will have to show that the original conviction proceeded on evidence known to the complainant to be false or was due to the wilful suppression by him of material information (a). **Thimma Reddi v. Chenna Reddi**, 16 M.L.J. 18.

SUBRAHMANYA AYYAR, OFFG. C.J. and SANKARAN NAIR, J.

References.—(a) 26 M. 506 (at p. 508), R. 11 Q.B.D. 440 (at p. 455), L.R. 11 A.C. 247, R.

- (3) *Malice—Commencement of prosecution bona fide—Continuance of the proceedings malo animo—Reasonable and probable cause, want of—Question of fact.*

A prosecution, though in the outset not malicious, as having been undertaken at the dictation of a Judge or Magistrate, or if spontaneous as having been commenced under a bona fide belief in the guilt of the accused, may, nevertheless, become malicious in any of the stages through which it has to pass if the prosecutor, having acquired positive knowledge of the innocence of the accused, perseveres malo animo in the prosecution, with the intention of procuring per nefas a conviction of the accused (a).

Malicious prosecution.—(Continued.)

Where the question of reasonable and probable cause depends entirely on the proof of the facts and circumstances, which gave rise to, and attended, the prosecution, no doubt has ever existed from the time of the earliest authorities, but that such question is purely a question of law to be decided by the Judge (b).

To succeed in an action of malicious prosecution, the plaintiff has also to prove that there was a want of probable and reasonable cause for the prosecution, or (as it may be otherwise stated) that the circumstances of the case were such as to be, in the eyes of the Judge, inconsistent with the existence of reasonable and probable cause. **The Town Municipality of Jambusar v. Girjashankar Narsaram**, 7 Bom. L.R. 655=30 B. 37.

JENKINS, C.J., and LATTY, J.

References.—(a) (1861) 30 L.J.C.P. 257, 264; (b) (1841) 10 L.J. Ex. 545, 553, R.

- (4) *Tort—Master and Servant—Damages—Implied authority in the servants—Acting in master's interest—Munim and Naib.*

The defendant No. 1, who was a peon under defendant No. 2, the Naib of defendant No. 3, prosecuted the plaintiff in the Criminal Court, but the plaintiff was found not guilty and acquitted. In a suit, subsequently brought by the plaintiff against the defendants Nos. 1, 2 & 3, to recover damages for malicious prosecution, it was found that the prosecution of the plaintiff was started by the defendant No. 1.

Under the orders of the defendant No. 2, in the interest of and for the benefit of defendant No. 3, all the expenses in the prosecution of the criminal case were borne by the estate of the defendant No. 3.

Held, that the defendant No. 3 is answerable for the wrongful acts of his servants, defendant Nos. 1 and 2 and is liable to pay damages to the plaintiff, it being clear that there was an implied authority in the Naib, defendant No. 2 under whose orders the defendant No. 1 was acting, in starting the prosecution against the plaintiff, and the object of the servant's action was to advance their master's cause. **Sarat Chandara Roy Chaudhury v. Dawlat Singh**, 10 C.W.N. 728.

GHOSH and PARHITER, JJ.

- (5) *Suit for damages for—whether maintainable against a Municipal Committee.*

Malicious Prosecution.—(Concluded).

A Corporation, such as a Municipal Committee, is not, in the eye of law, incapable, in its corporate capacity, of a malicious intention. Proceedings, such as a suit for damages for malicious prosecution, in which it might be necessary to prove actual malice, could therefore be instituted against such a Committee. *Amar Nath v. Municipal Committee, Kartarpur*, 86 P. R. 1906.

REID, C.J.

References.—L.R. Q.B.D. (1900), 23, F. L. R. 11 App. Cas. (1890), 247, R.

(6) *Malice and want of reasonable and probable cause, duty of plaintiff to prove.*

In this case the plaintiff sued for 'compensation for damage in reputation and goods' by reason of defendant having maliciously brought a charge of criminal trespass against him. Plaintiff claimed damages for loss of crops basing it on the same ground as the rest of his claim. *Held*, plaintiff can claim damages for loss of crops as well, if he can show that it was a natural consequence of the alleged malicious prosecution. *Held*, however, that, according to the evidence, not only did the plaintiff fail to prove the want of reasonable and probable cause for the charge but the defendant had shown the existence of such cause.

Held, also, that a conviction, even though reversed on appeal, is very strong evidence of the existence of reasonable and probable cause for the charge; and it is especially so, where the Appellate Court only gave the plaintiff the benefit of a doubt. *Nga Tun Gyaw v. Mi Po Mo*, U.B.R. (1906), Tort 5.

SHAW, J. C.

References.—21 A. 26, 1 C.W.N. 587, 3 M.H. C.R. 239, 2 L. B. R. 111, U.B.R. (1892-96), 264, U.B.R. (1897-01), 111, 464, R.

See, also, I, 678-680; and Act XII of 1855 (Imperial), No. 1.

Namlatdar's Courts Act.

—See ACT III of 1876 (BOMBAY).

Management.

See I, Hindu Law (Religious matters), No. 1, and Limitation Act, No. 8.

Mandatory Injunction.

—See INJUNCTION.

Maps.

(1) *Thak and survey—, effect of—See REGULATION XI of 1825 (BENGAL), No. 1, 3 C.L.J. 816.*

(2) *Admissibility of—in evidence—See ACCRETION, No. 1, 3 C.L.J. 560.*

Marine Insurance.

See I, Policy of Insurance, No. 2.

Marksmen.

See, I, Transfer of Property Act, No. 20.

Marriage.

(1) *Between Hindu pariah and Burmese Buddhist woman, whether valid in law.*

The frequency of permanent alliances between the Tamil cultivators of the lower orders and Burmese women tends to show that the former do not consider themselves bound by the rule of Hindu law, which Hindus of the recognized castes regard as one of the essentials of their religion and system. In the absence, therefore, of anything to show that a *pariah* has adopted the rule of the Hindu system, the ordinary presumption of marriage must be applied to the relation of a *pariah* with a Burmese woman, who claims to have been his wife on evidence of co-habitation for many years. *S. Anamalai Pillay v. Po Lan*, 3 M.B.R. 228.

FOX, C.J. & IRWIN, J.

References.—10 Bur. L.R. 269, R.

(2)—of a male member of a *Tarwad*, expenses of, among Nanjinad Vellalas, a valid charge on *Tarwad* property—See MARUMAKKATHAYAM LAW (TARWAD), No. 1, 21 T. L. R. 179.

(3)—with an idiot, validity of—See ACT IV of 1860 (DIVORCE), No. 2, 8 Bom. L. R. 982.

See, also, I, 680 and Act XV of 1856 (Widow Marriage), No. 3.

Marumakkathayam Law.

1.—ADOPTION.

2.—ALIMENTATION.

3.—DEBT.

4.—GIFT.

5.—MAINTENANCE.

6.—PARTITION.

7.—TARWAD.

———1.—(Adoption).

(1) *The basis of, on grounds secular as well as religious—Intention of parties, effect of.*

Marumakkathayam Law.—(Contd.).**1.—(Adoption).—(Concluded).**

Though, in strictness, it cannot be laid down that adoption, among the Marumakkathayam non-Brahmans, is a purely secular Act, there is no doubt that the theory of the Malabar adoption is based on secular, as well as on religious, grounds.

It was, therefore, decided in this case that, under the circumstances, though the effect of the adoption in question was to create a community of interest, the intention of the parties to the said adoption might be held to have been the dissolution of such community. **Kanuku Raman Aiyappan v. Kanuku Sankaran Easwaran**, 21 T.L.R. 24.

GOVINDA PILLAI, OFFG.C.J., & PADMANABHA AIYAR AND RAMACHANDRA ROW, JJ.

2.—(Alienation).

- (1) *Mortgage by junior managing member of Tarwad whether valid, without proof of Tarwad necessity for loan.*

The alienation of *Tarwad*, property, by a managing junior member, cannot be upheld, unless the alienee proves *Tarwad* necessity for the same. *Held*, therefore, that, in the present suit for cancellation of certain hypothecation bonds, impugned as against the rights and interests of the *Tarwad*, no attempt having been made to prove the existence of *Tarwad* necessity for the loans under the bonds, the lower Court rightly ordered their cancellation. **Yaldhianatha Aiyar Ramaswamy Aiyar v. Kanakku Kuttalanatha Yelayudhan**, 21 T.L.R. 286.

GOVINDA PILLAI, HUNT & PADMANABHA AIYAR, JJ.

References:—6 T.L.R. 13, 7 T.L.R. 127 & 13 T.L.R. 155, *P*.

3.—(Debt).

- (1) *Debt incurred by Karnavan, onus of proof as to Tarwad necessity for.*

Questions arose, in this case, as to what the exact powers of a *Karnavan* are to incur a debt on behalf of the *Tarwad* and what are the presumptions to be made with regard to the liability of a *Tarwad* when such a debt is put into litigation. *Held*, it being a well-established principle of Malabar Law that the debt contracted by a *Karnavan* is for the purpose of the *Tarwad*, the execution of a mortgage is within the scope of the *Karnavan*'s authority and it is on those, who challenge the validity of such a mortgage, supported by valuable consideration,

Marumakkathayam Law.—(Contd.).**3.—(Debt).—(Concluded).**

to make out that it was executed under such circumstances as would absolve the *Tarwad* from all liability therefor. So, as soon as the *factum* of the mortgage and the payment of full and adequate consideration therefor are established by the mortgagee, the burden of making out the absence of family necessity is thrown on those who impeach the validity of the transaction. But, though, where the creditor of the *Karnavan* proves the passing of consideration, the burden of proving the binding nature of the debt is shifted from him, yet, the onus may again revert to him and the questions as to how soon, or upon the proof of what facts by the *Andradravers*, the onus will again so revert to the creditor and as to the further evidence to be let in by him, will depend on the circumstances of each case. **Krishnan Aiyappan v. Padmanabhan Raman**, 21 T.L.R. 289.

SADASIVA AIYAR, C.J., & GOVINDA PILLAI, J.

References—5 T.L.R. 29, 7 T.L.R. 127, 8 T.L.R. 125, 15 T.L.R. 180 & 20 M. 141, *R*.

4.—(Gift).

- (1) *Karnavan of a Tarwad, validity of gift made by, depends on the properties being self-acquired.*

Where, on a gift of certain properties by the *Karnavan* of the *Tarwad*, it appeared that the properties disposed of did not constitute his self-acquisition but had been acquired only by means of funds, belonging to the *Tarwad*, it was *held* that the gift was invalid, since the *Karnavan* was not entitled to give away properties belonging to the *Tarwad*; and, further, the gift had not been completed by the transfer of the possession to the donee. **Kunjan Narayanan v. Kunjan Yelayudhan**, 21 T.L.R. 183.

GOVINDA PILLAI, OFFG.C.J., & RAMACHANDRA ROW AND EAPEN, JJ.

Reference:—16 T.L.R. 101, *R*.

5.—(Maintenance).

- (1) *Property assigned to junior members of a Tarwad, by way of maintenance, whether and when Karnavan could resume.*

Neither the length of the time, during which the junior members of a *Tarwad* might have been in possession of the *Tarwad* properties, nor the fact that they have been maintaining themselves out of the income of such properties and husbanding the surplus for making ac-

Marumakkathayam Law.—(Contd).**—5.—(Maintenance).—(Concluded).**

quisitions, can affect the *Karnavan's* right to recover the properties from their possession on his making suitable arrangements for their maintenance. **Raman Govindan v. Raman**, 21 T.L.R. 159.

GOVINDA PILLAI, HUNT and PADMANABHA AIYAR, JJ.

References:—12 T.L.R. 133, and 15 T.L.R. 42, F. 14 T.L.R. 49, R.

—6.—(Partition).

- (1) *Separate enjoyment by several branches of a Tarwad, fact of division among them inferrible from.*

When long and separate residence of the several branches of a *Tarwad*, with separate enjoyment of properties and payment of taxes, co-exist with the dealing of the *Tarwad* properties by them independently of their common senior, the inference of division can be safely made without a formal partition, though it cannot be laid down safely that, in all cases of separate living and enjoyment for a long time, the burden of proving non-division must be held as lying on the party alleging such non-division. **Kanuku Raman Aiyappan v. Kanuku Sankaran Eswaran**, 21 T.L.R. 24.

GOVINDA PILLAI, OFFG.C.J., & PADMANABHA AIYAR and RAMACHANDRA ROW, JJ.

References:—2 T.L.R. 88, 18 T.L.R. 193 & 19 T.L.R. 73, F.

—7.—(Tarwad).

- (1) *Expenses of marriage of a male member, whether binding on Tarwad property, among the Vellalas of Nanjinad.*

On behalf of the appellant in this case, the point was urged that the marriage of a male in a *Marumakkathayam Tarwad* was not legally binding on the family property and that, therefore, money borrowed for the expenses of such a marriage could not be considered as debt incurred, for *Tarwad* necessity. *Held*, the parties being vellalas of Nanjinad, among whom the issue of a marriage are entitled to a specific share in the property and among whom the marriage of a male is compulsory in the family, the expenses of the marriage of a male member of a *Tarwad*, among them, constitute a valid charge on the family property, and the contention that the expenses of such a marriage would

Marumakkathayam Law.—(Contd).**—7.—(Tarwad).—(Concluded).**

not bind the *Tarwad* should be thrown as untenable. **Kanuku Aunda Perumal Pillai Aiyar Perumal Pillai v. Kanuku Bhoothalingamm Pillai**, 21 T. L. R. 179.

GOVINDA PILLAI & PADMANABHA AIYAR, JJ.

References:—16 T.L.R. 85 (86) & 4 T.L.R. 63, F.

Mashkabi Accounts.

See *I, Evidence Act*, No. 9.

Master and Servant.

Suit for damages for malicious prosecution started by servant in the interests of master—Liability of latter for damages for such malicious prosecution—Implied authority in servant—See *MALICIOUS PROSECUTION*, No. 4, 10 C. W. N. 723.

See, also, *I*, 681.

Material alteration.

What is—for the purpose of vitiating a bond—See *ALTERATION*, No. 1, 3 C.L.J. 363.

Medical practitioner.

Suit for fees by a—Ignorance or improper treatment of the patient, a good plea in defence to the action—See *PLEA*, No. 1, 8 Bom. L. R. 98.

Mercantile Law.

See *I*, 681-682.

Mercantile Usage.

See *I*, 682.

Merchandise Marks Act.

See under *ACT IV OF 1889*.

Merchant Shipping Act, 1894.

- (1) *Intention of the Act—Right to share in ship—without registered bill of sale.*

The intention of the Act being that “interests arising under contract or other equitable interests may be enforced by or against owners and mortgagees of ships, in respect of their interest therein, in the same manner as in respect of any other personal property,” it is competent to a person to establish his alleged right to his share of a ship and its income, without any registered bill of sale. **P. M. P. A. Alagappa Chetty v. N. S. T. Y. Chidambaram Chetty**, 1 M. L. T. 407 = 29 M. 526.

SUBRAHMANYA IYER and BENSON, JJ.

Merchant Shipping Act, 1894.—(Concluded).

References :—L.R., 7 A.C. 127, F; 32 Law, J.C.P. 113, 29 Law J. Ch. 827, 21 M. 395, 50 Law J. Q. B. 421, R.

Merger.

- (1) *Holder of the Shikmi tenure in a chuck purchasing the Mokarari interest in the same—Merger of the mokarari interest in the superior tenure—Sale of entire mortgaged property—Purchaser's right to the merged interest—Transfer of Property Act IV of 1882, S. 111 (d) and S. 70, applicability of.*

The question in this case was whether, when a person purchases the *mokarari* interest in a *chuck*, the interest so purchased merges in the *Shikmi* tenure already held by him therein. The lower Court proceeded on the ground that S. 111 (d) of the Transfer of Property Act was not applicable because the *mokarari* lease was one for agricultural purposes.

Held, that when the *Shikmi* and *mokarari* interests in a *chuck* come to be vested in one and the same person the latter interest merges in the former tenure (a).

Held, further, even if there was no merger, the *mokarari* interest purchased would be an accession, under S. 70 of the Transfer of Property Act, to the *shikmi* right already mortgaged and a purchaser at the sale in execution of the decree on the mortgage is therefore entitled to claim a right to the *mokarari* interest as well basing his right to it as such accession (b). **Surja Narain Mantadal v. Nanda Lal Sinha**, 88 C. 1212.

GEIPT & ORMOND, JJ.

References :—(a) 5 C. 198, R. (b) 3 C.W.N. 323, 25 A. 46 & 5 C. 198, F.

Meane profits.

- (1) *Suit for—Possession in execution of a decree subsequently set aside—Whether such possession is "wrongful"—Right to sue for meane profits—See LIMITATION ACT, No. 67, 8 C.L.J. 182.*

(2) *Decree awarding possession set aside on appeal to High Court—possession again awarded to High Court on review—Right to—between the original decree of the High Court and the one passed on review—See CIV. PRO. CODE, No. 126, A.W.N. (1906), 171.*

(3) *Interest on—when recoverable—See INTEREST, No. 4, 83 C. 329.*

Meane profits.—(Concluded).

- (4) *Power of District Judge to pass a decree for—against co-sharer—See ACT II OF 1901 (N.W.P. TENANCY), No. 28, A.W.N. (1906), 222.*

(5) *—due at date of suit for possession—Subsequent suit for meane profits alone, whether barred by S. 43, Civ. Pro. Code—See CIV. PRO. CODE, No. 50, 9 O.C. 224.*

(6) *Prior suit for, whether suit for possession maintainable subsequent to—See CIV. PRO. CODE, No. 58, 9 O.C. 322.*

(7) *Inclusion of, in calculating value of appeal to Privy Council—See APPEAL (TO PRIVY COUNCIL), No. 7, 83 C. 1286.*

(8) *Registration of estate by natural guardian in his own name instead of in name of infant—Right of infant to meane profits in suit on attaining majority—See HINDU LAW (STRIDHAN), No. 4, 2 C.L.J. 238 (P.C.).*

See, also, I, Civil Pro. Code, Nos. 32, 102, & 149; Limitation, No. 2 and Limitation Act, No. 28.

Mineral rights.

Holder of—entitled to incidental rights and all other rights over the surface necessary for the lawful and reasonable exercise of such rights—See LESSON AND LESSEE, No. 1, 3 C.L.J. 103.

See, also, I, 683.

Minerals.

A permanent lease including "all rights of various kinds" includes—See LEASE, No. 2, 3 C.L.J. 306.

Mines.

See I, 683-687 and Khorposh grant, No. 1.

Mining Rights.

- (1) *—in the case of permanent tenure—Permanent tenure, nature of—Transfer of Property Act, Ss. 108, cl. (a) & 117.*

The holder of a permanent tenure, possesses all the underground rights including mining rights, unless there is an express reservation to the contrary.

The holder of a permanent tenure, with heritable and transferable rights, possesses all kinds of rights attaching to the lands from the centre of the earth to the sky, unless there is an express reservation restraining the enjoyment of any specified rights.

Mining Rights.—(Concluded).

S. 108 of the Transfer of Property Act has no application to agricultural leases as laid down in S. 117 of the Act. *Srikam Chakraborty v. Kumor Hari Narain Sicha*, 3 C. L. J. 59=38 C. 54=10 C. W. N. 425.

PRATT and PARUITER, JJ.

References.—2 C.L.J. 20 and 7 B. 109, D.

(2) Injunction sought for against operations commenced under principles regulating the grant of—Balance of convenience—See INJUNCTIONS, No. 1, 10 C.W.N. 178.

Minor.

(1)—*capacity of, to make a will.*

The question in this case was whether a minor was capable of making a valid testamentary disposition of property. *Held*, since a minor is not competent to make a contract, grant or other disposition of property that can be enforced during his life, the disposal of property by him, by means of a will to take effect after his death, could not, on any ground whatever, be treated as effective and valid, *Mamidi Subbayya v. Mamidi Kondayya*, 16 M.L.J. 186.

BENSON and MOORE, JJ.

(2) *Mother's right to the custody of—girl handed over to a mission to be taken care of.*

Where a mother, being unable to maintain herself and her children, handed over her daughter, six years old, to a christian mission to be taken care of, and the girl is likely to get on well, under the care of the mission, the mother, who subsequently becomes a convert to Muhammadanism and earns her livelihood as a cooly and living with a paramour, is not entitled to the custody of her daughter, with a view to make her also a convert to Muhammadanism. It would be prejudicial to the interests of the girl to be compelled to return to her mother's charge, and the interest of the child is the most important element to be considered by the Court.

In this view, it is unnecessary to deal with the question of law raised to the effect that, in consequence of the enactment of the Guardians and Wards Act, 1890, a suit like the present does not lie. *Mariyumma v. Rev. Beshard*, 1 M.L.J. 347.

SUBRAMANIA AIYAR & BENSON, JJ.

References.—23 C. 290, *Appr.*, 14 M.L.A. 309, R.

Minor.—(Continued).

(3) *Suit through next friend by a, to set aside a prejudicial contract by guardian whether maintainable.*

Suit by a minor through his next friend to set aside a lease by the guardian of the minor as being detrimental to his interests. It was argued on appeal that, as a minor is not competent to make or ratify a contract, he is equally incompetent to repudiate a contract but the agreement was held untenable as ignoring the distinction between a contract that is void because entered into by a minor, and a contract entered into on the minor's behalf by a proper guardian and it was held, that, seeing that a minor may legally contract through his guardian, it necessarily follows that he is competent as well to sue through a next friend to set aside such a contract, if found prejudicial to his interests. *Abdulla Khan v. Ramdas*, 2 N.L.R. 146.

BATTEN, A.J.C.

(4) Appeal by—Death of next friend pending appeal—Non-appointment of new next friend—Mere irregularity—Civil Pro. Code, S. 578—See NEXT FRIEND, No. 1, 3 A.L.J. 81.

(5) Power, under Mahomedan Law, of the natural guardian of a, to alienate his property—See MAHOMEDAN LAW (ALIENATION), No. 2, 21 T.L.R. 228.

(6) Pro-note executed by a person, on attaining majority, in settlement of an earlier one executed during minority. Validity of consideration—See CONTRACT ACT, No. 2, 16 M.L.J. 422.

(7) Sale of property for benefit of, who can impeach validity of—See MAHOMEDAN LAW (SALE), No. 2, 4 C.L.J. 578.

(8) Contract on behalf of—, specific performance of—See CONTRACT, No. 3, 4 C.L.J. 481.

(9) Contracts by, whether illegal—See CONTRACT ACT (IX OF 1879), No. 8, 11 C.W.N. 135.

(10) Suit against—Compromise—Leave of Court—See CIV. PRO. CODE, No. 249, 3 A.L.J. 710.

(11) Partition-deed beneficial to member of joint Hindu family—Right of minor to sue on the deed—Specific Relief Act, S. 22(c).—See HINDU LAW (PARTITION), No. 6, A.W.N. (1906), 261.

(12) Appropriation of debt due to minor by third party—See JOINT TORT-FEASORS, No. 1, 147 P.L.R. 1906

(13)—not properly represented by guardian *ad litem* in suit—Decree by default—Sale in execu-

Minor.—(Concluded).

tion of such decrees not binding on—See GUARDIAN AND WARD, No. 2, 3 A.L.J. 615.

(14) Question whether sale was for benefit of the, whether a question of fact or law—See MAHOMEDAN LAW (ALIBRATION), No. 3, 4 C.L.J. 486.

See, also, I, 687-688; and Guardian, No. 4; and Guardian Wards Act, No. 1; and Negligence, No. 2.

Minor and Guardian.

(1) A minor member of a joint Hindu family will be bound by a mortgage by the Karta of the family, who is also the certificated guardian of the minor—See HINDU LAW (JOINT FAMILY), No. 4, 3 C.L.J. 12.

(2) Application for certificate of guardianship by the mother of an unmarried female minor—Second marriage of the mother, a Muhammadan, no valid objection—See CIV. PRO. CODE, No. 256, A.W.N. (1906), 64.

(3) Adjustment of decree by guardian without Court's permission cannot be certified under S. 258, C.P. Code—See CIV. PRO. CODE, No. 140, 29 M. 309.

See, also, I, 688-689; Guardians and Wards Act, No. 2; and Hindu Law (Joint Family), No. 14.

Minor's property.

Guardian's position and duty—investment of, by guardian—Charge of investment—Court's sanction—See GUARDIAN AND MINOR, No. 1, 3 Bom. L.R. 883.

Misconstruction of deed.

See I, Appeal (second), No. 2.

Misjoinder.

(1)—of cause of action, joining in a single suit by a reversioner, of claims against different transferees of widow, whether amounts to—See CIV. PRO. CODE, No. 54, 9 O.C. 326.

(2) The joinder of the several trespassers over an estate, in one suit relating to it is not a.—See RUS JUDICATA, No. 25, 9 O.C. 339.

Misjoinder of causes of action.

(1) Joinder of more than one claim in the same suit relating to immovable property, no—See CIV. PRO. CODE, No. 56, 3 A.L.J. 123.

(2) Executors, administrators and heirs as such—Legatee and next-of-kin—See CIV. PRO. CODE, No. 57, 3 Bom. L.R. 734.

Misjoinder of causes of action.—(Concluded).

See, also, I, 689-690; Civil. Pro. Code, Nos. 65 & 68; Limitation Act, No. 28-a; and Rent, No. 8.

Misjoinder of Causes of action and of parties.

See I, 690.

Misjoinder of parties.

(1) Joinder of ancillary relief is no misjoinder.

Several causes of action, in each of which all the defendants are not interested, cannot be joined together but matters, which are prayed for against some of the defendants only as merely ancillary to the relief to be given to the plaintiff in respect of the only cause of action involved in a suit, ought not be treated as independent causes of action and the suit regarded as bad for misjoinder. *Sri Raja Simhadri Appa Rao v. Prattipati Rameswara, 29 M. 29.*

SUBRAHMANYA AYYAR, OFFG. C. J. and SANKARAN NAIR, J.

References.—1 M. 338, D. 13 C. 75 at p. 77; 5 M. 229 at p. 230, 14 M. 490 and 24 M. 296, B.

(2) Suit against the plaintiff's agent and the plaintiff's debtors in the alternative is not bad for—See CIV. PRO. CODE, No. 37, 16 M. L. J. 89=29 M. 50.

(3) Person getting renewal of pro-note unauthorisedly is trustee for the rightful owner—Joinder of parties to a suit by rightful owner.

A had given an on demand promissory-note to one D. D died leaving the plaintiffs, his undivided brothers, entitled to its amount. Behind the back of the plaintiffs, W, the widow of D, obtained a renewal of the pro-note from A in favour of M, her mother, and returned the original note to A. Plaintiffs instituted the present suit to recover the sum due under the renewed note impleading A, W and M as defendants. *Held*, in obtaining the renewal in the name of M, W and M must be taken to have become trustees for the plaintiffs and in giving the note in the name of M, A intended to, and in law did, really, renew the note to whoever was his creditor. There was therefore no misjoinder nor was the action one that could not be sustained. *Ramakrishna Raja v. Katta Venkataswamy, 29 M. 87.*

BODDAM, J.

See, also, I, Civil Pro. Code, No. 381 and Registration Act, No. 6.

Mistake.

(1)—In copying out a petition of compromise along with fraud alleged in connection with the petition is good ground for review of the decree—See CIV. PRO. CODE, No. 389, 10 C.W.N. 286.

(2) Relief on the ground of—Mutual mistake—Rectification of instruments—See SPECIFIC RELIEF ACT (I OF 1877), No. 7, 8 Bom. L.R. 354.

(3) Right of person paying money under, to get it refunded—See CONTRACT ACT, No. 30, 131 P.R. 1906.

(4) Movable property delivered to defendant under erroneous order of Magistrate—Suit to recover same by true owner—Limitation—See LIMITATION ACT, No. 48-a, 1 M.L.T. 997.

See also, I, *Specific Relief Act*, No. 13.

Mistake of law.

Erroneous opinion on a point of law—*Res judicata*—See CIV. PRO. CODE, No. 17, 8 Bom. L.R. 932.

See, also, I, *Insolvency*, No. 2.

Mokarari Tenure.

See I, *Civil Pro. Code*, No. 197.

Mortgage.

- 1.—GENERAL.
- 2.—ACCOUNTS.
- 3.—APPORTIONMENT.
- 4.—CONDITIONAL SALE.
- 5.—CONSTRUCTION.
- 6.—CONTRIBUTION.
- 7.—EQUITABLE MORTGAGE.
- 8.—EXTINCTION OF SECURITY.
- 9.—EXTINGUISHMENT OF MORTGAGE.
- 10.—FORECLOSURE.
- 11.—FORMS OF MORTGAGES.
- 12.—MARSHALLING.
- 13.—REDEMPTION.
- 14.—SALE.

———1.—(General).

(1) A Hindu father governed by the Mitakshara contracted a mortgage debt on April 4, 1887. This was discharged, after his death, with the consideration of a subsequent mortgage made on October 28, 1892, by his two sons, one of whom was a minor. *Held*, that the mortgage was, as regards the minor executant, absolutely void.

Mortgage.—(Continued).

———1.—(General).—(Continued).

Quære—Whether the subsequent mortgagee can hold up not merely as a shield but as a weapon of attack the earlier mortgage discharged by means of moneys advanced by him? **Maharaj Singh v. Raja Balwant Singh**, 3^d A.L.J. 274 = A.W.N. (1906), 117 = 38 A. 508.

STANLEY, C.J. and BURKITT, J.

(2) *Mortgage of joint property—Liability of share of mortgagor—Partition—Effect of—*

Out of six houses belonging jointly to R. J. and R. D. five were mortgaged by R. J. to the predecessors in interest of the plaintiff. The remaining house was subsequently sold by R. J. to the defendant. On partition, the house sold to the defendant was allotted to the share of R. J. and the five mortgaged houses were allotted to the share of R. D. The defendant contended that the house sold to him could not be sold to satisfy the mortgage on the suit of the plaintiff.

Held, that the contention was not valid for the sale of the house by the mortgagor did not prejudicially affect the rights of the mortgagees and their representative in interest, the plaintiff (a). **Allah Bakhsh v. Gobind Ram**, 10 P.L.R. 1906 = 2 P.R. 1906.

ROBERTSON and RATTIGAN, JJ.

References:—(a) L.R.I.A., 1 p. 106; 12 W. R. (S.C.), 233, R.

(3) *Suit to enforce mortgage—Scope of such suit—Parties necessary to such suit—Frame of such suit—Mortgagee if can debate title of mortgagor.*

Not only the mortgagor, but all persons deriving title from him subsequent to the mortgage and bound thereby as holders of different fragments of the equity of redemption are necessary and proper parties to a suit to enforce the mortgage.

The proper scope of a mortgage suit is to cut off the equity of redemption and to bar the rights of the mortgagor and those claiming under him; the only proper persons to such a suit are the mortgagor and the mortgagee and those who have acquired interest under them subsequent to the mortgage. It is not competent for the mortgagee to make as party defendant one who claims adversely to the title of the mortgagor and mortgagee; he is a stranger to the mortgage, has no connection with the

Mortgage.—(Continued).**1.—(General).—(Continued).**

mortgage, and, as his adverse claim of title cannot, in any way, be affected by the mortgage suit in which he has no interest, he cannot be made a party for the purpose of litigating such claim of title (a.)

The above rule of law is not merely a technical and convenient one, but is based upon perfectly intelligible and substantial grounds. **Jajneswar Dutt v. Bhuban Mohan Mitra**, 3 C.L.J. 205 = 83 C. 495.

RAMPINI and MOOKERJEE, JJ.

References—(a) 12 C. 414, 32 C. 746 and 2. Ch. Ca. 244, R. 8 C.W.N. 365, 43 Ch. D. 188, D.

(4)—Suit for recovery of mortgage debt—Form of decree in use before the passing of the Transfer of Property Act—Attachment of non-mortgaged property—Effect of such attachment.

In a suit for recovery of mortgage debt, a decree was passed, before the coming into force of the Transfer of Property Act, 1882, in favour of the plaintiff, declaring the amount due to him and that he had a lien on the property of the mortgagee for the amount so found to be due. In execution of that decree, the judgment-creditor attached certain property of the judgment debtor other than the mortgaged property. This property was, in due course, sold, and subsequently certain mortgagees, who had taken a mortgage thereof pending the attachment, sued to have the sale set aside. *Held*, that, owing to the form in which the original decree was passed, the judgment-creditor had full power to attach and bring to sale in execution thereof any property of his judgment-debtor. **Ram Baran Singh v. Gobind Singh**, A. W.N. (1906), 7 = 3 A.L.J. 95 = 28 A. 295.

STANLEY, C.J. and KNOX, J.

Reference.—2 C. 213, F.

(5) Prior and puisne mortgages—Estoppel.

In 1887, B mortgaged the land in suit to K, who in the same year mortgaged his mortgage rights together with other properties to N. A further charge was created by K in 1890, by a mortgage which also included some of the lands held by K in ownership by purchase. N having sued on his mortgages of 1887 and 1890, obtained a decree in 1896 against K personally as well as against the mortgaged properties. In

Mortgage.—(Continued).**1.—(General).—(Continued).**

execution of his decree, N applied for attachment and obtained prohibitory orders under S. 268 of the Civil Procedure Code, which enjoined K from recovering the mortgage money from B until further orders. N further obtained attachment orders under S. 276 of the Civil Procedure Code. B with the leave of Court mortgaged in 1896 the land in suit to N. In 1902, K brought a suit for recovery of possession of mortgaged land in the mortgage executed in his favour in 1887. N pleaded that the suit was barred by limitation and on the ground of acquiescence and estoppel. B in his application for leave to make a private alienation of property to satisfy the decree of N, had admitted the mortgage in favour of K.

Held, that the suit was not barred by limitation, for under S. 19 of the Limitation Act, the application for leave to mortgage made by B operated as an acknowledgment of K's right and saved limitation.

Held, also, that K was estopped from questioning the mortgage of 1896 or setting up his prior mortgage rights as a mortgagee against N as he had led N to believe that the mortgage of 1896 was proper and acceptable to him. **Kanshi Ram v. Badda**, 23 P.L.R. 1906.

JOHNSTONE and LAL CHAND, JJ.

(6) Mortgage of joint property by one co-parcener—Subsequent mortgage of the same by another co-parcener—Sale of the property in execution of a money decree against the latter to whose share it had fallen on partition—Subsequent mortgagee's right to enforce his lien against the property in the hands of a bona fide purchaser at the sale.

N and S, two undivided brothers of a joint Hindu family, owned a number of houses as their joint family property. N mortgaged one of the houses to R and subsequently all the houses were mortgaged by S to one A. On partition between the brothers, S got the equity or redemption of the former house, as part of his share so that, after the partition, the house stood in the hands of S subject to the mortgage to R. In execution of a certain money decree against S, the house was put up for sale and purchased by one B. Subject to the incumbrance in favour of R, B paid off the amount of that incumbrance, paid the decree-holder in full and the balance to S, the judgment-debtor

Mortgage.—(Continued).**1.—(General).—(Continued).**

A, the other mortgagee, in pursuance of a decree obtained by him against S, had the house in question attached in execution. It was, however, released from attachment at the instance of the abovementioned Court purchaser, B, and A, thereupon, brought the present suit for a declaration that the house was attachable and was subject to sale in execution of his decree against S. *Held*, since admittedly A was fully cognizant of B's purchase at the Court sale, his silence and conduct towards B, a *bona fide* purchaser for value without notice, deprived A of his right to enforce his lien as puisne mortgagee against the property in B's hands. Equity requires that, as between A and B, it should not be that B, who purchased the house in an open Court sale, in complete good faith, must suffer while A, knowing of the whole transaction, stood by and allowed B to so purchase. *Asis Begam v. Mohan Lal*, 88 P. R. 1906 = 132 P. L. R. 1906.

ROBERTSON and CHITTY, JJ.

(7) *Prior and subsequent mortgage—Sale by first mortgage and purchase by himself—Purchaser from first mortgagee—Redemption of purchaser by subsequent mortgagee—Amount payable.*

A first mortgagee, who had no notice of a subsequent mortgage, obtained a decree for a mortgage-debt (amounting to about Rs. 350) in a suit in which the subsequent mortgagee was not made a party, brought the property to sale and purchased it himself for Rs. 25 and, subsequently, sold it to the plaintiff for Rs. 99. The subsequent mortgagee also obtained a decree on his mortgage and purchased the property at a sale held under that decree.

In a suit brought by the plaintiff against the subsequent mortgagee, in which the prior mortgagee was not made a party :

Held,—that without prejudice to the rights of the first mortgagee and as between the plaintiff and the defendant, the latter could be allowed to redeem the former only upon payment of what was now due on the first mortgage—and not merely what the first mortgagee or the plaintiff himself had paid for the property. *Girish Chandra Mandi v. Kedar Nath Kundu*, 10 C.W.N. 592 = 33 C. 590.

MACLEAN, C.J. and GEIDT, J.

Mortgage.—(Continued).**1.—(General).—(Continued).**

(8) *Mortgage by manager of a joint estate—Appointment of the manager subsequently declared illegal, effect of—Validity of actions of such manager, when for the benefit of the estate—Acquiescence of major co-sharer—Estoppel—Non-liability of the minor's estate.*

When a person agrees to the appointment of a manager of his estate and that of a minor co-sharer of his, of whom he himself was the duly appointed guardian, and when such manager borrows money on the security of the joint-estate for the purpose of paying off the liabilities of such person :

Held, that, although the appointment of the manager was not lawfully made, and his actions cannot affect the estate of the minor co-sharer, the major co-sharer cannot be heard to repudiate the actions of a manager, to whose appointment he fully agreed, in some of which he himself joined, and by which he only was benefited. The estate of the major co-sharer must be held liable for the debt incurred by such manager for its benefit. *Gandan Singh v. Inder Narain Singh*, 8 C.L.J. 537.

HARRINGTON and PRATT, JJ.

(9) *Suit on puisne mortgage—puisne mortgagee a party to the former suit on prior mortgage—right of redemption of puisne mortgagee—extinguished when decree passed on prior mortgage.*

Certain property, was mortgaged to R in January, 1892, and to R and S. in March, 1892. The latter mortgage was found to have priority over the former as, with its consideration, some earlier mortgages had been discharged. This finding became final. R and S first brought a suit upon the mortgage of March, 1892, and foreclosed the property. R then brought the present suit for foreclosure of half the property in possession of L on his mortgage of January, offering to redeem the prior mortgage. *Held*, that, R being a party to the suit on the mortgage of March, his right of redemption was extinguished upon the foreclosure of that mortgage and the present suit was not maintainable. *Ram Lal v. Lakhpat Rai*, 3 A. L. J. 240 = A. W. N. (1906), 112.

BANERJI, J.

(10) *Sub-mortgage, right of, to a decree for sale of his mortgagor's interests—Suit by sub-*

Mortgage.—(Continued).**1.—(General).—(Continued).**

mortgages for such a decree, parties necessary for.

Suit by a sub-mortgagee for recovery of money due on his sub-mortgage by sale of the rights of the plaintiff's mortgagor, i. e., the original mortgagee.

In the Court below no objection was taken to the suit on the score of the want of necessary parties, but on appeal, it was contended that the original mortgagor should have been made a party. *Held*, that the contention could not be considered in appeal and ought to have been put forward in the Court of first instance. *Held*, also, that a sub-mortgagee is entitled to a decree for sale of his mortgagor's interest and may even obtain a decree for sale of the original mortgagor's interest. *Sita Ram v. Kasbi*, 9 O. C. 233.

CHAMBER, J. C.

References.—27 A. 511, 48 A. 113, 5 O.C. 335 and 20 M. 35, F.

(11) *Mortgage-bond, construction of—Promise to pay—Personal liability, intention—Balance of unsatisfied debt, application for—Properties other than mortgaged, liability of—*

Where a debtor has pledged his property as security for the loan, the creditor should have a personal remedy, unless the deed makes it clear that the intention of the parties was that the remedy of the mortgagee should be restricted to the lands mortgaged.

Every mortgage contains within itself, so to speak, a personal liability to repay the amount advanced; in other words, where there is in a mortgage nothing to the contrary, there is an implied promise to pay presumed in law, from the fact of the acceptance of the loan; the mortgage merely giving the mortgagee an additional security in the shape of the pledged property (a).

Per MOOKERJEE, J.—Although a mere recital of a debt may not be, by itself, and apart from the context, sufficient to imply a contract to pay and thus create a personal obligation, a provision in a mortgage-deed, that the money will be repaid on a certain day, imports a covenant for repayment on that day for the breach of which, an action would lie against the mortgagor, the judgment in which action

Mortgage.—(Continued).**1.—(General).—(Continued).**

could be satisfied out of his general property (b). *Parbati Charan Roy v. Gobinda Chandra Kundu*, 4 C.L.J. 246.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 12 W.R. 281, 12 C. 389, 14 A. 513, (1843) 4 Q.B. 182, (1882) 22 Ch. D. 511 (516), (1786) 8 P.Wms. 358, (1813) 2 Ba. & Be. 274 and (1868) L.R. 6 Eq. 487, R., 11 I.A. 83—10 C. 740, 16 C. 540, D. (b) (1877) 7 Ch. D. 573, (1854) 8 Drees. 25, (1852) 7 Exch. 246 and (1852) 8 Exch. 116, R.

(12) *Incomplete transaction—Mortgagee failing to redeem previous mortgages—Contract Act (IX of 1872), Ss. 39, 64—Rescission of contract—compensation for breach of contract.*

When a mortgagee by the terms of his mortgage agreed to redeem previous mortgages immediately or within a reasonably short period and failed to perform his promise—

Held, that, owing to his default, the mortgagee was not entitled to recover from the mortgagor possession of the mortgaged property or the amount advanced to him. *Saudagar Singh v. Sant Ram*, 87 P.L.R. 1906=103 P.R. 1906.

JOHNSTONE and LAL CHAND, JJ.

(13) *Payment by third person of money due under mortgage-bond—Intention to keep mortgage alive—Priority—Mortgage-bond, document whether—Court-fee—Appeal.*

Where the money due under a mortgage-deed was paid by the money of a third person, the mere fact that the latter had paid off the mortgage-money would not, by itself, entitle him to the benefit of the bond as security for the payment. It must be shown that there was an agreement between the parties, when the payment was made, that the mortgage should be kept alive for him.

The demand of a creditor, which is paid with the money of a third person and without any agreement that the security shall be assigned or kept on foot for the benefit of such third person, is absolutely extinguished by the payment; whether a mortgage paid off has been kept alive or extinguished depends on the intention of the parties; the mere fact that it has been paid off is not sufficient to show whether or not it has been extinguished; ex-

Mortgage.—(Continued).**1.—(General).—(Continued).**

press declaration of intention will cause either the one result or the other, and in the absence of such expression, the intention may be inferred either one way or the other; and the ordinary rule is that a man having a right to act in either of two ways, shall be assumed to have acted according to his interests.

An unsecured creditor of a mortgagor, who finds himself obliged for the protection of his own interest to pay off the mortgage-debt, is entitled to have an assignment of the security.

Held, upon the facts and circumstances of the case that they raised a strong presumption that, in the present case, there was the intention to keep the mortgage alive, when the payment was made by the plaintiffs.

That the assignment of the bond in favour of the plaintiffs, who had paid off the mortgage, gave to them all the rights as first mortgagees, although the assignment was made after the date of payment.

A agreed to pay loans up to a certain sum, which might be paid to him by B, and admitted that if he failed to do so, B would be entitled to recover the debt by sale of a certain property of A and from his person and other properties. Further, the deed was registered as an agreement in Book I, and not as a mortgage which would have been copied in Book IV, under the Registration Rules:

Held—That the deed did not create any special lien on the specific property mentioned in the deed; and the circumstance that the document was registered as an agreement in Book I was evidence of the intention of the parties to the document to treat it as an agreement rather than as a mortgage.

In execution of a mortgage-decree, a property was purchased for Rs. 2,500 by the mortgagee.

Held—That for the purposes of Court-fee, Rs. 2,500 must be taken as the value of the property affected by the decree. **Jagatdhar Narain Prasad v. A.M. Brown**, 10 C.W.N. 1010=4 C.L.J. 121=33 C. 1133.

BRETT and GUPTA, JJ.

(14) *Priority—Acceptance by mortgagee of fresh mortgage in satisfaction of decree obtained on first mortgage.*

Mortgage.—(Continued).**1.—(General).—(Continued).**

Where K, a mortgagee having obtained a decree on his mortgage, did not bring the property to sale but in satisfaction of his decree accepted an usufructuary mortgage from the mortgagor (judgment-debtor) and another person jointly. *Held* that the prior mortgage was extinguished, and that, in a suit against K by N. R. on a mortgage which was subsequent to K's first mortgage but prior to K's second mortgage, K, could not, for the purpose of obtaining priority, date back his title through his second mortgage to his first mortgage. **Nakta Ram v. Moti Ram**, A.W.N. (1906) 191.

RICHARDS, J.

(15) *Property sold—Third party advancing money on security of the property mortgaged—Sale set aside—Third party entitled to benefit.*

Where a mortgage-debt, for the payment of which a sale has been ordered, is satisfied by a third party on obtaining a security of the property ordered to be sold, for the advance made by him, and the proceeding for sale came to nothing, the incumbrance in respect of which the sale was ordered enures to the benefit of the party making the payment. **Shyan Lal v. Bashirud-Din**, 3 A.L.J. 630=A.W.N. (1906) 230=23 A. 778.

STANLEY, C. J., and KNOX, J.

References.—31 C. 863; 29 M. 37, *Appr.* and *F.*, 27 A. 400, *R.*

(16) *Mortgage of joint property, by receiver, pending partition suit—Attaching creditors of certain portion of the property, if entitled to priority over mortgagee.*

The question in this case was whether the attaching creditors of the shares of certain of the co-parceners of a joint estate were entitled to priority over a mortgage executed by a Receiver pending a partition suit between the co-parceners. It was urged that the mortgage executed by the Receiver having been subsequent to the attachment, it must be held to be subject to them, and that the attaching creditors were, therefore, entitled to priority. *Held*, that it was immaterial what were the dates of the order under which the mortgage in question was executed or of the mortgage itself. The point was as to whe-

Mortgage.—(Continued).**1.—(General).—(Continued).**

ther the suit for partition of the joint estate was pending at the time of the attachments, and, if it was, then, even if the order of the Court and the mortgage executed under that order had been subsequent to the attachment, the mortgagee would still be entitled to priority, because it would otherwise be impossible for the Court to carry into effect a partition of the joint estate, if particular creditors of particular owners could be heard to say that they are entitled to priority over persons, who have advanced money for the purpose of the partition, and on the faith of the Court's order giving them a first charge on the property to be partitioned. **Herumboo Nath Banerjee v. Satish Chandra Mukerjee**, 38 C. 1175.

SALE, J.

- (17) *Joint family property—Co-owners, two out of several—Want of family necessity—Validity of mortgage—Personal decree barred—Mortgage decree against mortgagors, if available.*

When two out of several co-owners of a joint family property execute a mortgage of such property not for family necessity but for meeting their own debts, and without the consent of the other co-owners, the mortgage is not a valid mortgage of the family property; and if, in such a case, the mortgagee allows the personal remedy against his mortgagors to be barred by time, a mortgage-decree cannot be allowed even as against them. **Palukdhary Jha v. Baljit Chowdhry**, 4 C.L.J. 543.

HARINGTON & PRATT, JJ.

- (18) *Transaction evidenced by the deed—Nature of the transaction which the parties contemplated—Evidence—construction.*

Where the contention in a case is that there was no agreement enforceable by law to sell the property, but that there was a mortgage agreement, it should be specifically determined whether the real transaction between the parties, as shown by evidence, is a mortgage or a sale.

PER HEATON, J.—The theory that an apparent sale is a mortgage is not based on the conception of a sale accompanied by a modifying oral agreement or understanding. It rests on the supposition that the intention of the parties is simply and solely that the property shall be security for the debt; and that no sale

Mortgage.—(Continued).**1.—(General).—(Continued).**

in any form is jointly contemplated. The fact that the document takes the form of a sale-deed is explained by the assumption (1) of a fraud by the creditor; or (2) of a convention which the creditor insists shall be observed, and which the debtor dare not repudiate; or (3) of circumstances peculiar to an individual transaction. It may be that the debtor prepares for himself a case specially difficult of proof: but that is not a reason for refusing to allow him to attempt to prove it. **Krishna Bal v. Rama Bala**, 8 Bom.L.R. 764.

ASTON and HEATON, J.J.

References:—11 M.I.A. 7, 7 Bom L.R. 669, 8 Bom. L.R. 553, 16 I.A. 223, 8 Bom. L.R. 761. 7 C. 291, 22 A. 49 = 2 Bom. L.R. 523, R.

- (19) *Clog on equity of redemption—consolidation of securities—covenant in subsequent simple mortgage-deed not to redeem prior usufructuary mortgage without paying the subsequent advance—interpretation of deed—Transfer of Property Act (IV of 1882), S. 61, applicability of.*

Where a person made a prior usufructuary mortgage of certain property in favour of three persons for Rs. 1,000 and, subsequently, made a simple mortgage of the same property in favour of those persons for Rs. 1,500 (i.e., Rs. 500 plus Rs. 1,000 due on a prior simple bond), stipulating, in the latter deed, that the mortgagor would not redeem the property unless he paid "the said amounts" (i.e., the sums secured by the second mortgage) with interest, and the suit was brought for redemption of the usufructuary mortgage only;

Held, that the condition in the latter bond did not evidence an intention to consolidate the amount thereof with that of the earlier one, and the plaintiffs were not precluded from redeeming the usufructuary mortgage only.

S. 61 of the Transfer of Property Act has no application to the case, because that section refers to mortgages on different properties. **Bhartu v. Dalip**, 3 A.L.J. 672 = A.W.N. (1906), 278.

STANLEY, C. J. & KNOX, J.

- (20) *Evidence Act (I of 1872), S. 92—Written instrument—Representation that a sale deed would not be enforced as a sale deed—Construction of document.*

Mortgage.—(Continued).**1.—(General).—(Continued).**

Where, at the time of executing a document, a representation is made that document, though, in form, a sale-deed, will not be enforced as against the executant, as a sale-deed, and where, on the faith of that representation, the executant executes the document, the sale-deed cannot be upheld as a sale-deed as against him. *Navabhai Fulchand v. Sirvhai Ganu Korpe*, 8 Bom. L.R. 701.

JENKINS, C.J. and BEAMAN, J.

References.—22 A. 149 and 17 C. 297, R.

(31) *Prior mortgage—Puisne mortgage—Suit by prior mortgagee in which puisne mortgagee not a party—Decree—Execution—Sale in execution—Rights of the puisne mortgagee.*

Where a prior mortgagee sues his mortgagor, for sale of the mortgaged property, without making a puisne mortgagee a party to the suit, the latter is, in no way, affected by the suit or its results. Thus, if the property is brought to sale in execution on the decree, and is bought by a third person, the puisne mortgagee has against him precisely the same rights as he had collectively against his mortgagor and the prior mortgagee, viz., he may sue to redeem the purchaser as mortgagee, or thereafter as mortgagor to foreclose, or suffer himself to be redeemed by him. *Pandurang v. Sakharchand*, 8 Bom. L.R. 861.

RUSSELL, AG. C.J., AND BEAMAN, J.

(32) *Execution of decree based on—Sale of one of several mortgaged properties—Purchase by decree-holder of one of several mortgaged properties—Contribution in execution-proceedings, not allowable.*

A judgment-creditor, in execution of a mortgage-decree, which directs the sale of several properties, is entitled to execute the whole decree by sale of any of the properties, even though he has himself purchased some of the properties, in execution of another mortgage-decree, against the same judgment-debtors. Any question of contribution which may arise by reason of the purchase by the decree-holder of some of the mortgaged properties, must be worked out, not in execution-proceedings, but in a separate suit properly framed, and in the presence of all necessary parties (a). *Amoor Chund v. Bakshi Shiva Persad Singh*, 4 C.L.J. 273.

RAMPINI and MOOKERJEE, JJ.

Mortgage.—(Continued).**1.—(General).—(Continued).**

References.—(a) 4 C. L. R. 154, *App.*, 4 C.L.J. 195 & 4 C.L.J. 317, *doubted*.

(33) *Personal liability of the mortgagor—“Such other relief as the Court thinks fit,” meaning of—Contract Act, S. 74, explanation, effect of—Powers of a man, of the family.*

A deed provided for payment of interest at 7 p.c., per annum, with a further provision that, on default, interest at 12 p.c., shall be payable on the arrears of interest. The deed also provided for the payment of the principal, on a certain date, in any year, after five years from the date of the deed, with a further provision that, on default, interest at 12 p.c., should be payable “on the responsibility of the mortgaged property.” *Held*, that the deed contained a personal covenant to repay, notwithstanding the words “on the responsibility of the mortgaged property”. The deed cannot be construed as excluding the personal liability of the mortgagor, which exists in the case of a simple mortgage, unless there is a specific contract to the contrary (a).

The plaintiff is not precluded from claiming, under this covenant, by reason of the fact that there is no specific prayer in the plaint with reference thereto. The fact of his asking for “such other relief as the Court may think fit” is enough to enable the Court to give him the appropriate relief, if he is otherwise entitled to it (b).

Where a person is not a party to the mortgage transaction, the plaintiff is not entitled to a personal decree against him, in respect of the money alleged to be in his hands.

The fact that plaintiff delayed in instituting the suit is no ground for holding that there never had been any intention to enforce the enhanced rate.

The explanation to S. 74, Contract Act, as amended by Act VI of 1899, provides that a stipulation for increased interest from the date of default may be a stipulation by way of penalty. This explanation (a) is introduced to meet the decisions to the effect that, when the higher rate of interest is payable as from the date of default, and not as from the date of contract, the contract rate is enforceable. The explanation, read by the light of the illustra-

Mortgage.—(Continued).**——1.—(General).—(Continued).**

tions, shows that it is for the Court to decide, on the facts of the particular case, whether the stipulation is or is not a stipulation by way of penalty. Even in the view that the stipulations are by way of penalty, and that S. 74 applies, it is open to the Court, under that section, to award to the plaintiff the penalty stipulated for, so long as it is not in excess of the reasonable compensation, to which he is entitled.

It is within the scope of the authority of the *ejaman* of the family to make a contract, and the family are bound by it. **Abbakke Heggadhi v. Kinkhlamma Shetty**, 29 M. 491.*

WHITE, C.J., and BENSON, J.

References:—(a) 22 A. 453 (461), R. (b) 2 M. I. A. 353 (389), 27 A. 325 (331), R. (c) 25 M. 843, 8 A. 185 & 10 M. 203, R.

(24) Interest at the contract rate under a—due even beyond the date fixed by the decree for payment and up to date of realisation—See TRANSFER OF PROPERTY ACT, No. 75, 3 C.L.J. 85.

(25) Power of executor to—testator's estate—See ACT V OF 1881 (PROBATE), No. 14, 3 C.L.J. 260.

(26) Right of usufructuary mortgagee to claim interest when he does not take possession of the mortgaged land—See INTEREST, No. 5, 9 O. C. 144.

(27) Sale of part of mortgaged property with judgment-debtor's consent in England—Effect of suit in Chancery Court—See TRANSFER OF PROPERTY ACT (IV OF 1882), No. 84, 3 A.L.J. 445.

(28) Sale under a prior mortgage, mortgagor acquiring mortgaged property sold on a, effect of—See TRANSFER OF PROPERTY ACT (IV OF 1882), No. 20, 29 M. 113.

(29) Due attestation of a mortgage-deed, when may be presumed—See ATTESTATION, No. 1, 2 N. L. R. 65.

(30) Sale of mortgaged property under a decree for rent—Mortgagee's charge on surplus sale proceeds—See TRANSFER OF PROPERTY ACT, No. 57, 33 C. 878.

(31) Mortgagee's right to enforce claim which has arisen independently of the mortgage—See TRANSFER OF PROPERTY ACT, No. 51, 16 M.L.J. 285.

Mortgage.—(Continued).**——1.—(General).—(Continued).**

(32) Mortgage of family property by a coparcener—subsequent division among coparceners not binding on mortgagee—See HINDU LAW (JOINT FAMILY), No. 13, 8 Bom. L.R. 550.

(33) Purchase of a mortgage-decree by the holder of the interest of one of the mortgagors, effect of—redemption of the mortgage—See TRANSFER OF PROPERTY ACT, No. 61, 4 C.L.J. 195.

(34) Interest on—up to what date realizable—See INTEREST, No. 6, 33 C. 846.

(35) Money-decree given in a suit on a—Relief prayed for but not granted—Second suit for sale—See CIV. PRO. CODE, No. 14, 33 C. 849.

(36) Right of mortgagor to insist on a sale of all the mortgaged property before a decree under S. 90 of the Transfer of Property Act is passed—See TRANSFER OF PROPERTY ACT, No. 85, 10 C.W.N. 802.

(37) Portion of mortgaged lands declared not liable for mortgage debt—Appeal against such mortgage decree—Mortgage-debt greater than the value of exonerated property—Value of appeal—See COURT FEES ACT (VII OF 1870), No. 15, 1 M.L.T. 311 (F.B.)

(38) Ubhayapattam mortgage, incidents of—See MORTGAGE (REDEMPTION), No. 17, 16 M.L. J. 462.

(39) Anomalous mortgage—Ubhayapattam mortgage—Application of S. 98, Transfer of Property Act, to anomalous mortgage executed before the Act—See MORTGAGE (REDEMPTION), No. 17, 16 M.L.J. 462.

(40) Suit for sale on foot of mortgage of property subject to a charge for maintenance—See TRANSFER OF PROPERTY ACT, No. 77, 3 A.L.J. 818.

(41) Sale by joint owner of his share—Subsequent "mortgage" of the remaining property by the other joint owner—Mortgage really a sale—Whether latter joint owner has right to pre-emption—See PRE-EMPTION, No. 38, 145 P.R. 1906.

(42) Objection by party defendant to sale of property ordered by mortgage decree to be sold—CIV. PRO. CODE, No. 1, 16 M.L.J. 545 IN THE SUPPLEMENT.

(43) Assignment of mortgage right pending suit on mortgage—Insufficient attestation of the mortgage deed—Discovery of this defect af-

Mortgage.—(Continued).**1.—(General).—(Concluded).**

tor assignment—Suit by assignee for refund of purchase money—Special covenant protecting assignor from liability—See **TRANSFER OF PROPERTY ACT**, No. 38-a, 1 M.L.T. 416.

See, also, *I, Mortgage (Miscellaneous)*, 718-725; *Adverse Possession*, No. 1; *Civil Pro. Code*, Nos. 56, 152; *Limitation Act*, Nos. 33, 84; *Registration Act*, No. 7; *Res judicata*, No. 18; *Specific Relief Act*, Nos. 10 and 13; and *Transfer of Property Act*, Nos. 5, 17, 32, 33 & 35.

2.—(Accounts).

See, *I*, 691-692; *Mortgage (Redemption)*, No. 19.

3.—(Apportionment).

See, *I*, *Res Judicata*, No. 16.

4.—(Conditional sale).

(1) *Pre-emption—Custom, evidence of—Wajib-ul-arz—Reg. XVII of 1806—Construction of documents—Foreclosure.*

On the 11th May, 1871, the predecessor of the plaintiff mortgaged the disputed property by a deed of conditional sale, to the predecessor of the defendants for a period of 30 years, without possession, to secure a principal sum of Rs. 2,000 without interest. It was provided in the mortgage-bond that, if the mortgagor should die within the fixed period, then "after me the whole share of zamindari..... hypothecated as above shall be considered as a complete sale" to the mortgagee. On the 4th January, 1881, immediately after the death of the mortgagor, the defendant, the representative of the original mortgagee, without any foreclosure or other legal proceedings procured mutation of names for the mortgaged property in his own favour and shortly afterwards entered into possession.

Held, that the mortgage of 1871 was in substance, what it describes itself as being a mortgage by way of conditional sale. The mortgagee or his representative has, therefore, under Regulation XVII of 1806, the right to take legal proceedings with a view to foreclosure, and that foreclosure he could have obtained if, after the proper steps had been taken, the representatives of the mortgagor had failed to redeem within the time limited for that purpose by the terms of the Regulation. But there was no right to take possession of the property prescribed by law. In

Mortgage.—(Continued).**5.—(Conditional sale).—(Continued).**

entering, as he did, therefore, the representative of the mortgagee was a mere trespasser, and the heirs of the mortgagor were entitled to sue him in ejectment as such. *Hab Ali v. Wasir-un-Nissa*, 3 C.L.J. 601 (P.G.)=10 C.W.N. 778=28 A. 496=3 A. L.J. 712=1 M.L.T. 297.

LORD DAVEY, SIR ANDREW SCOBLE and
SIR ARTHUR WILSON.

(2) *Mortgage-deed—Period of redemption not stipulated for—Covenant as to mortgage becoming sale on default of payment of the agreed interest, whether amounts to a conditional sale—Regulation XVII of 1806, if applicable.*

The land in suit had been mortgaged with possession to the plaintiff by one D. No special period was fixed for redemption, but there was a condition that after six years' default in payment of the interest agreed upon by D, the land was to be considered as sold to the plaintiffs outright for the amount of principal and interest outstandings. Proceedings were taken by the plaintiffs against D's sons, under Regulations XVII of 1806, and the lower appellate Court, differing from the first Court, gave plaintiffs a decree for possession as owners by conditional sale. *Held*, following the Privy Council ruling in *Kishori Mohan Roy v. Ganga Bahadur Debi (a)*, that the agreement in question is not liable to the incidents applicable to such cases under the Regulation, the mortgage-deed in the "present case containing no stipulated period of redemption such as is required by para 8 of the Regulation and, in the absence of such a stipulation, the full period of sixty years allowed for redemption by the Limitation Act will hold good and such period of limitation cannot be affected by any covenant accelerating, for other purposes, the time at which the principal may become due.

Held, further, on a mere oral contract binding the mortgagor to repay the borrowed amount within stated time, a conditional sale cannot be set up such as might confer the status of an owner on the mortgagee with respect to the property mortgaged to him (b). *Bhag Singh v. Baswa Singh*, 50 P.R. 1906.

CHATTERJI, and KENNINGTON, JJ.

References.—(a) 23 C. 228 (P.G.), F. (b) 8 M. 185, D., 11 A. 638, Diss.

Mortgage.—(Continued).**4.—(Conditional sale).—(Concluded).**

(3) *Foreclosure by mortgages under Regulation XVII of 1906, suit for proprietary possession subsequent to, cause of action for, when arises limitation.*

Where a mortgage-deed provided for redemption within two years, and on default, the mortgages foreclosed the mortgage, allowing one year of grace, under Regulation XVII of 1906, on subsequent proceedings by the mortgagee for proprietary possession, it was held, that there was no time-limit for such an application made under the Foreclosure Regulation and that even assuming that he had only twelve years, from the due date within which to institute such proceedings, the period would begin to run only from the date of the expiry of the year of grace when alone the mortgagor's right to possession first determined. **Tek Chand v. Sohail Singh**, 65 P.R. 1906.

LAL CHAND, J.

References.—90 P.R. 1895 (F.B.), *F.*, 35 P. R. 1899, *D.*

(4) *S. 9 (3) of the Punjab Alienation of Land Act—Application of, to suits on mortgage by conditional sale by a person not a member of an agricultural tribe.*

S. 9 (3) of the Act does not apply to proceedings instituted, after the Act came into force, for the enforcement of a mortgage by conditional sale effected by a person, who is not a member of an agricultural tribe. **Kalu v. Mona Mal**, 64 P. R. 1906.

REID, J.

(5) Conditional sale clause struck out on reference by Civil Court to Collector—Jurisdiction of Civil Court to pass decree—See ACT II OF 1908 (PUNJAB), No. 1, A.W.N. (1906), 14.

(6) Foreclosure—Irrregular Notice when fatal—See REGULATION XVII OF 1906 (BENGAL), No. 1, 74 P.L.R. 1906.

(7) Money decree on mortgage—Sale of equity of redemption—Mortgagee's title on purchase—See TRANSFER OF PROPERTY ACT, No. 105-a, 157 P.L.R. 1906.

See, also, I, 692-693; and Pre-emption, No. 40.

5.—(Construction).

(1) *Construction of mortgage deed—Clause appropriate for usufructuary mortgage quali-*

Mortgage.—(Continued).**5.—(Construction).—(Continued).**

fied by later clause providing for compound interest—Seeming inconsistency.

A mortgage deed, after providing for yearly payment of interest and means for realising the same, stipulated that "if as a mark of favour the mortgagor let the interest remain unrealised" the same would be added to the principal, and compound interest run thereon. Subsequent clauses provided (a) "that, after taking possession, the mortgagee would be entitled to receive the net profits . . . in lieu of interest and during the time of such possession the interest and profits would be equal" (b); "that if the net profits should not cover the amount of interest, the mortgagor would make good the deficiency out of his own pocket"—the deficiency, if not so made good being made payable "with interest at the rate mentioned above at the time of redemption.

Held, that although cl. (a), standing alone, might possibly be construed as constituting an ordinary usufructuary mortgage, its *prima facie* meaning was qualified by cl. (b); the two clauses were not inconsistent with each other and read together made the principal money payable with compound interest.

That the concluding portion of cl. (b) made the unpaid interest payable with compound interest. **Jawahir Singh v. Someshwar Dat**, 10 C.W.N. 266 = 1 M.L.T. 66 (P.C.) = 3 C.L.J. 354 = 28 A. 225.

LORD DAVEY, SIR ANDREW SCOBLE, SIR ARTHUR WILSON and SIR FORD NORTH.

(2) *Construction of document—Usufructuary mortgage with personal covenant for repayment of the mortgage-money—Such personal covenant not conferring a right of sale.*

Where a mortgage is in other respects a usufructuary mortgage, the insertion therein of a personal covenant to pay the mortgage-debt on demand unaccompanied by any hypothecation of the property, the subject of the mortgage, cannot alter the character of the mortgage and give the mortgagee a right to sell the mortgaged property in the event of non-payment of the mortgage debt. **Kashi Ram v. Sardar Singh**, A.W.N. (1906), 226 = 28 A. 157.

STANLEY, C.J. and BURKITT, J.

References.—21 A. 4; *Distd.* 14 M. 282 and 17 M. 481, *Disa.*

Mortgage.—(Continued).**—B.—(Construction)—(Continued).**

- (3) *Construction of terms of—Waiver of right to cancel arrangement for payment by instalments.*

Where a mortgagee had not, on the mortgagor's failure to make regular payment, proceeded to cancel the arrangement for payment by instalments but had accepted irregular payments, and then the mortgagor made further default: *Held*, the mortgagee could not, on such further default, sue to set aside the whole arrangement *ab initio* but was only entitled to the balance of the principal together with interest from the date of the last instalment held to be satisfied. **Saiyid Sakhawat Hussain v. Gajadhar Pershad, A.W.N. (1906), 139.**

STANLEY, C.J. and KNOX, J.

Reference.—5 A. 289, Appr.

- (4) *Usufructuary mortgage-deed—Clause allowing mortgagor to redeem within three years and in default in a particular month in subsequent years, construction of—Suit for redemption brought within said three years, whether premature.*

Under the terms of a usufructuary mortgage-deed, the mortgagor was to pay back the mortgage-money and redeem the mortgage within three years and, in default, the mortgagee was to receive the money in any *Ani* month subsequently and restore the properties to the mortgagor. In accordance with the decision in *Rose Ammal v. Rajaratnam Ammal (a)*, *held*, that, under the deed in question, the mortgagor had the right to redeem at any time on or before the expiry of the three years. All that the further clause in the document to the effect that on failure to redeem by the mortgagor within the three years he can pay the mortgage amount to the mortgagee in any month of *Ani* and recover the property, can be held to mean, is that he cannot recover in any subsequent year at a date earlier than *Ani* (June—July) as, if he did so, he would deprive the mortgagees of crops grown on the land. **Chinnasamy Reddiar v. Krishna Reddy, 16 M. L. J. 146.**

SUBRAHMANYA AIXAR and MOORE, JJ.

Reference.—(a) 23 M. 33, 11.

- (5) *Mortgage deed, recital as to delivery of possession in, effect of—Clauses as to payments of commission and interest construed.*

Where a mortgage deed set forth that possession of the property mortgaged by it was

Mortgage.—(Continued).**—(Construction)—(Continued).**

given to the mortgagee, whereas the mortgagee never in fact got possession of the same, the real agreement having been to the effect that, in case of mortgagor's failure to pay on demand, the mortgagee was to recover the amount by bringing the mortgaged property to sale and, holding the former personally liable for any deficiency, the recital as to delivery of possession was held to be apparently a mere form of words and the mortgage was held nothing but a simple mortgage.

There was also a covenant in the deed that a certain commission was to be paid for every year that the debt to the plaintiff remained outstanding. It was argued for the defendant, however, that the payment of the commission was subject to the clause about the keeping of a *gumasta* by the plaintiff, but it was *held*, that the stipulation for commission was clearly unconditional, as it did not appear from any of the wordings in the deed that the defendant's liability for commission had any connection with the undertaking by plaintiff to maintain a *gumasta*.

Held, further, that on the construction of the clauses as to the payment interest, even though they contained no express provision for *post-diem* interest, the plaintiff was entitled, on default, to recover interest technically as damages, at the stipulated rate, up to the date of the decree, and at a reasonable rate thence forward and up to realization. **Gangarain Bihari Lal v. The Firm of Shriram Shaligram, 2 N.L.R. 162 (P.C.)**

LORD MACNAGHTEN, SIR ANDREW SCOBLE,
SIR ARTHUR WILSON & SIR ALFRED WILLS.

References:—17 A. 511 (P.C.) & 19 A. 39 (P.C.),
F, 25 C. 39 (P.C.), R.

- (6)—of covenant in a usufructuary mortgage for payment of *kist* by mortgagee construed as referring to the *kist* payable under the settlement in force at the date of the mortgage—See MORTGAGOR and MORTGAGEE, No. 2, 16 M.L.J. 28.

(7) Case in which the plaintiff-pre-emptor was allowed to prove by evidence *abunde* that a deed of simple mortgage and a lease together represented a transaction of usufructuary mortgage—See PRE-EMPTION, No. 3, 3 A.L.J. 215.

- (8) Whether the transaction of a sale and covenant by vendee for resale to vendor amount

Mortgage.—(Continued).———**3.—(Construction).—(Concluded).**

to a sale or a—See **VENDOR and PURCHASER**, No. 2, 16 M.L.J. 106.

See, also, I, 693-695.

———**6.—(Contribution).**

- (1) *Two properties mortgaged—one sold to satisfy a prior claim—second property alone liable.*

Where two properties are mortgaged under a second mortgage and one of them is swallowed up by a first mortgage, the whole burden of the second mortgage falls entirely on the remaining property, the owner of which has no right of contribution against the owner of the property sold to satisfy the first mortgage. **Bohra Thakur Das v. The Collector of Aligarh**, 3 A. L.J. 439=A.W.N. (1906), 150=28 A. 593.

KNOX and AIKMAN, JJ.

References.—F.A. 63 of 1903, unreported and 24 M. 96, F.

(2) A mortgagee, who has security upon two or more properties which he knows belong to different persons, cannot release his lien upon one so as to increase the burden upon the others without the privity and consent of the persons affected. **Inam Ali v. Baji Nath Ram Sahu**, 10 C.W.N. 551=3 C.L.J. 576=33 C. 613.

MACLEAN, C.J. and MOOKERJEE, J.

References.—2 C.L.J. 202, 1 C.L.J. 337, F.

(3) *Transfer of Property Act, S. 82—part of property sold to satisfy earlier mortgage—subsequent mortgagee party—contribution.*

When property subject to a second mortgage is sold in execution of a decree obtained on a first mortgage in a suit to which the second mortgagee was a party, the purchaser, whether he be a decree-holder himself or an outsider, takes the property free of all claims under the second mortgage.

One B mortgaged his property to plaintiff. He and his brothers again mortgaged their respective shares to M. S then mortgaged his share to plaintiff. Plaintiff obtained a decree on his first mortgage, to which M was a party being interested in redeeming B's share, sold the property and himself purchased it. The plaintiff then redeemed M's mortgage and brought a suit on his third mortgage claiming the whole amount against S's share;

Held, that B's share, having been entirely swallowed up by the prior incumbrance, no

Mortgage.—(Continued).———**3.—(Contribution).—(Continued).**

right of contribution in respect of the second mortgage can be enforced against that property and the whole burden of the second mortgage must fall on the property of **S. Baldeo Prasad v. Sheo Dial**, 3 A.L.J. 441.

KNOX and AIKMAN, JJ.

(4)—*Redemption—Charge—Title through owner of charge—Title based on second mortgage—Priority.*

Held, that, where B, a purchaser of certain property under a simple money decree, has redeemed the whole mortgaged property, he has a charge on the shares of the other mortgagors (see Second Appeal No. 865 of 1904, above., p. 178), but his right to enforce that charge dates from the day when he paid off the entire mortgage and does not, therefore, take priority over the right of one claiming directly under a mortgage executed after the mortgage redeemed by B, but prior to that redemption. **Mahesh Datt Pandey v. Babu Dan Bahadur Pal**, A.W.N. (1906), 179.

RICHARDS, J.

(5) *Purchase in execution of decree in suit for contribution—Purchase in execution of simple money-decree—Priority—Charge—Transfer of Property Act (IV of 1882), section 93.*

Held that apart altogether from section 95 of the Transfer of Property Act, where B, a purchaser of certain property under a simple money decree, has redeemed the whole mortgaged property, he has a charge on the shares of the other mortgagors and having obtained a decree for sale of their property and having caused that property to be sold, the purchaser's claim has priority over that of an auction purchaser at a sale in execution of a simple money decree, which sale was subsequent to B's decree though prior to B's sale. **Mahesh Datt Pandey v. Tulsee Ram**, A.W.N. (1906), 178.

RICHARDS, J.

(6)—See **TRANSFER OF PROPERTY ACT**, No. 36, 9 O. C. 259.

(7) *Mortgagee not compellable to distribute liability among mortgaged properties—See TRANSFER OF PROPERTY ACT*, No. 70, 29 M. 217.

Mortgage.—(Continued).**3.—(Contribution).—(Concluded).**

(8) Principle of suit for—Payment of mortgage-debt by one of two co-mortgagors to save property from sale—See *TRANSFER OF PROPERTY ACT (IV of 1882)*, No. 64, 4 C.L.J. 79.

See, also, *I, Transfer of Property Act*, Nos. 39 and 41.

7.—(Equitable Mortgage).

(1) *Mortgage by deposit of title deeds—Sub-mortgage by deposit of mortgage-deed—Mofussil property—Transfer of Property Act (IV of 1882)*, Ss. 3, 58, 59—*Registration Act (III of 1877)*, Ss. 17, 48—*Priority—Notice*.

A valid equitable sub-mortgage of properties situated in the mofussil was created, in this case, by the mortgagee depositing the mortgage-deeds with his creditor's agent in Calcutta, with a view to securing debts, due to the creditor.

A deposit of the title-deeds of property under a verbal arrangement to secure payment of a debt, is not an oral agreement or declaration relating to such property within the meaning of S. 48 of the Registration Act.

A subsequent mortgage does not, by reason merely of being created by a registered document, and apart from the question of notice, acquire priority over a previous sub-mortgage created by a prior mortgagee by deposit of mortgage-deed (a).

In India there is no such distinction between legal and equitable estates as is known to the English Law (b).

Upon a finding that an attested clerk, whom the solicitors of the subsequent mortgagees had sent to complete the mortgage transaction on their clients' behalf, took part in proceedings, which ought to have put him on enquiry.

Held, that the subsequent mortgagees were affected with notice of the prior sub-mortgage.

A document purporting to contain an admission merely of a mortgage transaction between the parties, as distinguished from the mortgage itself, which in this case had already been created by the deposit of title-deeds, did not require registration under S. 17 of the Registration Act (c). • *Raja Gokul Das v. The Eastern Mortgage and Agency Co., Ltd.*, 10 C.W.N. 276 = 38 C. 410 = 4 C.L.J. 102.

MACLEAN, C.J. and CARPENTER, J.

Mortgage.—(Continued).**7.—(Equitable Mortgage).—(Concluded).**

References.—(a) 11 C. 152. (b) 8 C.W.N. 41 = 81 C. 57 (73), R. (c) 20 W.R. 150 and 7 B. L.R. 55, R.

(2) *Equitable mortgage—Deposit of title deeds—Loan to save property from loss or destruction—Priority*.

Where a loan is taken in Calcutta by deposit of the title deeds of a property, in order to secure the advance of money required to prevent the sale of such property:

Held, there is an equitable mortgage in favor of the creditor.

When subsequently the property vests in a Receiver, who by an order of Court mortgages the property to another person, the Court directing that such mortgage, being for the preservation of the estate, shall take precedence of all other incumbrances:

Held, (Per HARRINGTON & WOODROFFE, JJ. RAMPINI, J., *dissentiente*) such mortgage too priority over the equitable mortgage.

Per HARRINGTON, J.—Advances made to save the incumbered property from loss or destruction are payable in priority to all other charges and, amongst themselves, have precedence according to the inverse order of their respective dates.

Per HARRINGTON & WOODROFFE, JJ.—When the latter mortgage was made under an order of Court directing that it should be prior to all other charges, and that order has never been set aside, it takes precedence over the earlier mortgage. *Girdhari Lal Roy v. Parash Nath Mukerjee*, 4 C.L.J. 495 = 11 C.W.N. 1.

RAMPINI, HARRINGTON and WOODROFFE, JJ.

8.—(Extinction of Security).

See *I*, 695-696.

9.—(Extinguishment of Mortgage).

See *I*, 697.

10.—(Foreclosure).

(1) *Mortgage-bond—Validity—Payment of part of consideration—Decree for foreclosure*.

Suit to enforce a mortgage under a conditional deed of sale. The principal money mentioned in the mortgage was Rs. 500, but the amount advanced was only Rs. 279. *Held*, a mortgage-bond does not cease to be enforceable, merely

Mortgage.—(Continued).**10.—(Foreclosure).—(Continued).**

because a part only of the money mentioned in the bond has been advanced.

When it was not shown that the mortgagor had cancelled the contract or had the power to cancel it.

Held—That the mortgagee was entitled to a decree for foreclosure upon the footing of the money actually advanced (a). **Munshi Bajrangi Bahal v. Udit Narain Singh**, 10 C.W.N. 982.

MECLEAN, C.J. and MOOKERJEE, J.

Reference.—(a) 18 M. 136, D.

(3)—under Regulation XVII of 1806—extinction of mortgagor's right.

When a mortgagor, after proceedings for foreclosure had been taken against him under Regulation XVII of 1806 and after the expiry of the year of grace, again mortgaged the property, he could mortgage only his exproprietary rights. If the mortgagor, who cultivated the land as tenant of the second mortgagee, is ejected by the first mortgagee, who had foreclosed the mortgage, the second mortgage comes to an end, although the second mortgagee was not a party to the foreclosure decree. **Kunj Behari v. Baldeo Rai**, 8 A.L.J. 531 = A.W.N. (1906), 246.

BANERJI, J.

(3) Notice of foreclosure before period for repayment, whether valid and effective—Regulation XVII of 1806, S. 8, demand by mortgage under, when should be made.

The question for consideration in this case was whether the notice of foreclosure issued to the mortgagor before the period for redemption with the year of grace actually expired was a valid notice so as to effect the foreclosure at the expiry of the year of grace. *Held*, the mortgage, not being redeemable, and the mortgagee not entitled to payment until after the expiry of the grace, any notice before such period could have no effect towards foreclosure.

Also the demand by the mortgagee provided for by S. 8, by Regulation XVII of 1806, can be made only after the mortgage money falls due.

The further contention in the case, that the regulation cannot extend the stipulated period for payment was held untenable in view of S. 7 which refers to the year of grace as the "exten-

Mortgage.—(Continued).**10.—(Foreclosure).—(Concluded).**

ed period" (a). **Sant Singh v. Jiwan Mal**, 119 P.R. 1906.

REID, C.J. & CHATTERJI, J.

Reference.—(a) 43 C. 226 (P.C.), F.

(4) When a mortgagee can foreclose a portion of the mortgaged property—See TRANSFER OF PROPERTY ACT, No. 47, 3 C.L.J. 377.

(5) Foreclosure of mortgage by conditional sale—notification to mortgagor—See REG. XVII of 1806 (BENGAL), No. 2, A.W.N. (1906), 809.

(6) Decree for—not final decree—*Lis pendens*—See TRANSFER OF PROPERTY ACT, No. 27, 3 A.L.J. 675.

(7) Mortgage-decree before passing the Bundelkand Land Alienation Act—Order absolute for foreclosure—See ACT II of 1908 (N.W.P. FRONTIER ACTS), No. 2, 3 A.L.J. 738.

See, also, I, 697-699; Act XIII of 1900 (Punjab Alienation of Land), No. 3; Limitation Act, No. 131; Pre-emption, Nos. 9 and 15; and Transfer of Property Act, Nos. 46, 52 & 53.

11.—(Forms of Mortgages).

See I, Transfer of Property Act, No. 19.

12.—(Marshalling).

Not compellable so as to prejudice mortgagee—See TRANSFER OF PROPERTY ACT, No. 70, 29 M. 217.

13.—(Redemption).

(1) Appeal—Jurisdiction.

The plaintiff brought a suit, in the Court of the Subordinate Judge, for redemption of four mortgages for sums amounting in the aggregate to less than Rs. 5,000. The defendant, in his written statement, pleaded that there were four more mortgages on the property. The aggregate of the mortgage-money according to him exceeded Rs. 5,000. Two of the mortgage deeds set up by the defendant were found by the Subordinate Judge to be invalid, and the actual amount of mortgage money, which the Subordinate Judge found to be rightly a charge on the property and on payment of which he decreed redemption, fell under Rs. 5,000. An appeal against the decree of the Subordinate Judge was filed by the defendant before the District Judge, who, on objection having been raised by the other side, returned the appeal for presentation

Mortgage.—(Continued).**13.—(Redemption).—(Continued).**

to the Court of the Judicial Commissioner, Oudh. The defendant appealed against this order of the District Judge.

Held, that the appeal was properly presented to the Court of District Judge (a). **Lallu Sah v. Gaya Pershad**, 9 O.C. 96 (B).

CHAMIER and WELLS, J.CS.

Reference.—(a)—Select Cases No. 267, P.¹

(2) *Contract by guardian on behalf of a Minor—Personal liability of the minor, extent of.*

Plaintiff's case in the Court of first instance was that the defendant U sent her servant, the defendant S, to plaintiff's shop and borrowed money on account of her minor son, the defendant R. The Munsiff decreed against the minor and his mother, but, on appeal, the District Judge exonerated the minor on the ground that the debts for the discharge of which the money was borrowed were not proved to be such as were binding on the minor.

On the present petition put in by the plaintiff to revise the said order discharging the minor from the suit *held*, that the suit as against the minor must fail for the simple reason that a minor cannot be bound personally by contracts entered into by a guardian which do not purport to bind the estate. It would be a very improper thing to allow the guardian to make covenants in the name of his ward so as to impose a personal liability upon the ward and there is not in Indian Law any rule which gives a Guardian and Manager greater power to so bind the infant than exists in English Law (a).

So in claims for money borrowed on behalf of and expended on necessities for a minor he might be liable for the debt, but he would not be so liable by reason of the contract binding him personally. His liability would have to be based on the ground that there was a pre-existing liability on his part at the time when the guardian entered into the contract on his behalf (b). **Tukaram Manaji Dhangar v. Ramchandra Hari Peshkar**, 2 N.L.R. 25.

ISMAY, J.C.

References.—(a) 14 I.A. 89, R. (b) 26 M. 330, 20 B. 61 and 16 C. 330, H.

(3)—*of share in patti—Partition—Mortgaged property entered as a share in new mahal, but alleged by mortgagor to consist of sepa-*

Mortgage.—(Continued).**13.—(Redemption).—(Continued).**

rate plots—Decree to which mortgagor is entitled.

Certain property was mortgaged as a share in a *patti*. After the mortgage, a partition took place and the mortgaged property was transferred to another *mahal* and again described as a share in the *mahal*. The mortgagor sued for redemption, but claimed possession of certain specific plots of land as representing the share originally mortgaged. *Held*, that in such a suit, the plaintiffs could only get a decree for possession of an undivided share, and if they wanted the specific plots must apply to the Revenue Courts for a partition. **Chandan Singh v. Ram Singh**, A.W.N. (1906), 7.

BANERJI and RICHARDS, JJ.

(4) *Redemption of whole mortgaged property when portion of it purchased by mortgagee, suit for—Redemption of whole mortgage by owner of part of the equity of redemption.*

A person interested in part only of mortgaged property may insist upon redeeming the whole; but when a mortgagee purchases a part of the property, the latter can insist upon retaining the portion so purchased but he is not entitled to have the redemption restricted to the interest of the plaintiff who seeks to redeem. **Parwan Singh v. Bisheshwar Singh**, 9 O.C. 68.

CHAMIER, J.C.

(5) By redeeming a mortgage of the ordinary kind under which possession did not pass to the mortgagee, one of the several mortgagors becomes entitled to a charge on the interests of the other mortgagors, for the amount payable by the latter. **Malik Ahmad Wali Khan v. Mussamat Shamsi Jahan Begam**, 10 C.W.N. 626 (P.C.) = 3 A.L.J. 360 = 3 C.L.J. 481 = 1 M.L. T. 143 = 8 Bom. L.R. 397 = 16 M.L.J. 269 = 28 A. 482.

LORD DAVY, SIR FORD NORTH, SIR ANDREW SCOBLE and SIR ARTHUR WILMON.

(6) *Tender of mortgage-debt where no place for payment is specified—interest, cessation of, only on proper tender.*

Where a person seeks to redeem, he must make a proper tender of the mortgage-debt, and if no particular place for payment is specified under the contract, he must seek the creditor out. The reasons for the mortgagor not being able to make a proper tender of the redemption money have nothing to do with the mortgagee,

Mortgage.—(Continued).**—12.—(Redemption).—(Continued).**

the sole question being whether there was a proper tender or not. Where there was no proper tender, interest will continue to run as S. 84 applies only to a case of proper tender and interest does not stop from the date of the improper tender. **Mahadaji v. Pairia**, 2 N.L.R. 62.

BATTAN, A.J.C.

(7) *Payment of assessment by mortgagee—The amount so paid can be added to mortgage-money.*

. Apart from special stipulation, a mortgagee is under no liability to pay assessment as between himself and his mortgagor; and if he does pay it for the purpose of preserving his security, then he is ordinarily entitled to add that amount to his mortgage-money, and to require that he should be paid it before he can be redeemed.

Where the mortgagee agrees to pay a certain sum as assessment, and the assessment is subsequently increased, he is entitled to add the amount of the excess payment so made to his mortgage security. **Nilawa Sharma Bashya v. Krishnappa Huwappa Maistri**, 8 Bom. L. R. 350.

JENKINS, C.J. and RUSSELL, J.

(8) *Sub-mortgage—Sub-mortgagees impleaded—No specific prayer to redeem sub-mortgage.*

The plaintiffs had purchased the equity of redemption of all the mortgaged property, part of which had been sub-mortgaged.

Held that, having made the sub-mortgages parties, they were entitled to redeem the whole mortgage although they might not have specifically sought to redeem the sub-mortgage; that the proper course was to ascertain what sum was due to the sub-mortgagees and to direct payment of that amount to the sub-mortgagees out of the amount payable for redemption of the whole mortgage. **Raja Seth Gokul Das v. Debi Pershad**, A.W.N. (1906), 162 = 3 A.L.J. 548 = 28 A. 638.

STANLEY, C.J. and KNOX, J.

Reference.—15 B. 692, *Appr.*

(9) *Decree for redemption—Rate of interest after the date fixed for the redemption—Contract rate whether compulsory after such date.*

Mortgage.—(Continued).**—13.—(Redemption).—(Continued).**

On the question of what rate of interest should be allowed after the date fixed for redemption by the decree in a mortgage-suit held, following **Commercial Bank of India v. Ateendralayya** (a) that there is no authority making it compulsory on the Court to allow the contract rate after the above date. **Saminathan Chettiar v. Swamisappa Nalcker**, 29 M. 170 = 16 M.L.J. 133.

SUBRAHMANIA ATYAR and DAVIES, JJ.

References.—(a) 21 M. 364 and 23 M. 637, *F.*, 11 M.L.J. 7, *Diss.*, 26 C. 39 and 23 A. 181, *R.*

(10) *Construction of wells—Covenant to pay cost of wells—Mortgagee acquiring part of equity of redemption—Act IV of 1882, S. 72—Enhancement of revenue—mortgagor's liability.*

Where a mortgage-deed provided that, in case of redemption, the mortgagee would be entitled to the costs of constructing wells, if any, and the mortgagee acquired the equity of redemption in a part of the mortgaged property, held that it would be in the highest degree inequitable that he should not only have the benefit of the wells but also recover the money he spent in constructing them.

S. 72 of the Transfer of Property Act only reproduces the doctrines which the Courts had adopted before the passing of that Act. Hence, where a mortgage was made before 1882 and the Government revenue was enhanced and the mortgagee had to pay the enhanced revenue, the mortgagor was held liable to pay the enhanced revenue with interest at the time of redemption. **The Collector of Aligarh v. Bohra Thakur Das**, 3 A. L. J. 435.

KNOX and AIKMAN, JJ.

Reference.—10 A. 611, *R.*

(11) *Effect of foreclosure-decree obtained against Hindu father on son's right of redemption.*

Suit for redemption. The defendant-mortgagee had previously obtained a decree for foreclosure and obtained possession of the mortgaged property. Plaintiff (mortgagor's son) had not been made a party to the previous suit. *Held*, the plaintiff had not, by the foreclosure-decree against his father, lost his right to redeem. It might be that the son could not

Mortgage.—(Continued).**———12.—(Redemption).—(Continued).**

dispute the mortgage, but this does not preclude him from redeeming the mortgage. **Balaji v. Tulairam**, 2 N.L.R. 90.

BATTEN, A.J.C.

References.—28 C. 517, F., 4 M. 1, R.

(12) *Mortgage by some members of a joint Hindu family, suit for foreclosure of, omission to implead other members in—Right of omitted members to sue to redeem entire property.*

In a suit for redemption of the whole of a mortgaged property brought by some members of a joint Hindu family, it appeared that the defendant-mortgagee had, in a previous suit by him for foreclosure of the same mortgage, omitted to implead the plaintiffs as parties thereto, though he had notice of their interests. On a contention by him, however, that the plaintiffs ought not to be allowed to redeem the whole property, but must be limited to their shares alone, *held*, the character of indivisibility exists not only with reference to the mortgagee, who may generally be more benefited thereby, but also with reference to the mortgagor and persons acquiring through either any partial interest in the subject; none of whom therefore, can get relief under the mortgage, except in consonance with the principle of its indivisibility. Further, on general principles, the mortgagee should not be allowed to utilise his own neglect of a duty imposed by law and his failure to implead proper parties, to gain for himself a better position than he would otherwise occupy; and the plaintiffs, therefore, had the right to redeem the entire property mortgaged and such right ought not to be restricted to what would have been the share of each of them on partition. **Dindayal v. Sheoraj Singh**, 2 N.L.R. 116.

DRAKE-BROCKMAN, A.J.C.

References.—22 M. 209 (212), F., 3 C.P.L.R. 82 and 28 C. 517, R.

(13) *Purchase by prior mortgagee of mortgagor's rights in the subject-matter of the prior mortgage—Suit for redemption by puisne mortgagee.*

Held, that the purchase by a prior mortgagee of the mortgagor's rights in the subject-matter of the prior mortgage did not extinguish that mortgage, and did not prevent a puisne mortgagee from suing for redemption of the prior

Mortgage.—(Continued).**———13.—(Redemption).—(Continued).**

mortgage. **Ram Nidh Mir v. Ishar Dayal Mir**, A.W.N. (1906), 193.

RICHARDS, J.

(14) *Clog on the equity of redemption—Profit—Interest.*

Held that the following terms contained in a usufructuary mortgage did not constitute a clog on the mortgagor's right of redemption:—

"The interest of the mortgage money and the profits of the lands mortgaged, have been declared to be equal. We shall obtain redemption of the mortgaged property from the possession of the mortgagee on payment of the whole of the mortgage money in a lump sum in the month of *Jeth* when the land is unoccupied by crops. The mortgagee is at liberty to cultivate the land mortgaged himself or have it cultivated by any other person. We shall have no objection. Should the whole or part of the land mortgaged be cultivated by us in any year, we shall pay the arrears due by us at the time of harvest and before the Government instalment has fallen due. If we raise any objection the mortgagee shall be at liberty to recover the same from us and our mortgaged and other movable and immovable properties by means of distress or a suit. Should any part thereof remain unpaid we shall pay it together with interest at one rupee *per cent per mensem* and the mortgage money in a lump sum at the time of the redemption of the mortgage. We shall not be entitled to redemption without its payment." **Seth Chhatar Mal v. Lala Baij Nath**, A.W.N. (1906), 302=3 A.L.J. 684=28 A. 712.

STANLEY, C.J. and KNOX, J.

Reference.—26 A 559, D.

(15) *Decree for redemption, to specify time for payment of money.*

The question of foreclosure must necessarily be determined in the suit for redemption, the decree in which ought to fix the time within which the money for the redemption is payable. The proper course for a mortgagee, on failure of the mortgagor to pay the redemption money is not the institution of a suit for possession of the land, but an application to the Court to pass a final foreclosure-decree in the suit and, so long as such a decree is not passed, he has no right to the land. **Hla Nyo v. Sanl Pyu & Sanipru**, 3 L.B.R. 190.

IRWIN, J.

Mortgage.—(Continued).**—13.—(Redemption).—(Continued).**

Reference :—1 L.B.R. 186, R.

(16) *Suit for redemption, who are to be joined as parties to, in places where the Transfer of Property Act is not in force.*

Even in cases where the Transfer of Property Act is not in force at the time when a suit for redemption is filed, the spirit of the rules contained in it ought to guide the Courts, whose plain duty, in such a case, therefore, is, to assist on the joinder of all the parties that are interested in the subject-matter of the suit (a). Under Buddhist Law, the heir of a deceased husband is his widow, and, though the eldest son may have a limited interest, to the extent of one-fourth, during the widow's life-time, it is not competent for him to bring, by himself, a suit for redemption of the estate. **Shwe The v. Tha Kado**, 3 L.B.R. 169.

ADAMSON, C.J. AND FOX, J.

References :—(a) 2 U.B.R. (1892-96), 586 & 2 U.B.R. (1892-96), 581, F. 21 W.R. 428, R.

(17) "*Ubhayapattam*" mortgage, meaning of—*Clog on redemption—Covenant to renew mortgage perpetually—Transfer of Property Act, S. 98, Application of, to anomalous mortgage made before the passing of the Act.*

An "*Ubhayapattam*" is equivalent to a *Kanom* mortgage. A covenant to renew perpetually is a clog on the mortgagor's right to redeem and is inoperative, if it is entered into simultaneously with the mortgage. Where an anomalous mortgage was created prior to the Act, the question of its redemption has to be determined with reference to the law in force prior to that Act. It was observed that it was unnecessary to express any opinion as to the effect of S. 98, Transfer of Property Act, on similar covenants in anomalous mortgages executed after the passing of the Act.

According to the rules of Equity, which formed the basis of the course of decisions prior to the Act, but subsequent to 1858, any agreement entered into at the time of mortgage, having the effect of clogging the right of redemption, was inoperative. **Murthi Khandan v. Ananthanarayana Patter**, 16 M.L.J. 462 = 1 M.L.T. 426.

SUBRAHMANYA AYYAR and BENSON, JJ.

(18) *Malabar mortgages—Kanom, redemption of—Irredeemable or perpetual tenure—Anubhavam or Anubhogam—Purushanta-*

Mortgage.—(Continued).**—13.—(Redemption).—(Continued).**

ram—Construction of deeds—Limitation Act, Art. 134—Purchaser.

Suit for redemption. A deed recited that the plaintiff granted to the defendant "a renewed writing" in respect of certain lands and added "The rent due by defendant for holding the land on lease is 55 *paras*. The prior *Kanom* and the value settled for the reclamation effected hitherto and credited to the defendant's accounts is 700 *fanams*. The interest on the 700 *fanams* is 85 *paras* and the amount allowed for *anubhavam* is 5 *paras*; the balance left after deducting these (85 plus 5) 40 *paras* from the aforesaid rent of 55 *paras* is 15 *paras*." The tenant (defendant) agreed to pay rent calculated on this 15 *paras* and contested the plaintiff's right to redeem. *Held*, that no irredeemable tenure was created and that the defendant was entitled to recover 5 *paras* annually from the land, if the plaintiff should redeem the *Kanom*.

The word "*Anubhavam*" or "*Anubhogam*" literally means "enjoyment". In grants, it ordinarily implies hereditary and therefore perpetual enjoyment; and when used as descriptive of tenure of land, it *prima facie* implies a hereditary or an irredeemable tenure; but, when used with reference to an allowance of money or grain to be deducted from the rent due to the grantor, it will not imply any tenure in favour of the grantee. In such a case, though the allowance may be perpetual or may operate as a rent-charge of the land, it by no means follows that the tenure is irredeemable. Whether the word implies an irredeemable tenure or only a perpetual rent-charge depends on the language of each document. If the amount of the grant is not specified and if the terms of the document indicate that only a fixed rent is reserved for the grantor and the rest of the produce is given as "*Anubhavam*" or "*Favana*", the Court may treat it as creating an irredeemable tenure, so as to secure to the grantee the benefits intended for him by the grant.

In order to have the benefit of Art. 134, Limitation Act, the purchaser must show that he is the purchaser of an absolute title and not simply of the mortgagee's rights in the property. **Vythilingam Pillai v. Kathiravattath Nair**, 16 M.L.J. 358 = 1 M.L.T. 230 = 29 M. 501.

WHITE, C.J., and BENSON, J.

Mortgage.—(Continued).**—13.—(Redemption).—(Continued).**

References:—27 M. 202, *Expl.*, 14 M.I.A. 13, R.

(19)—*Clog on redemption—Second mortgage on same property—Agreement to redeem both mortgages simultaneously.*

Certain mortgagors, having taken a further advance on the security of a second mortgage of the same property, covenanted in the second mortgage that they should not be at liberty to redeem it, without, at the same time, redeeming the first. *Held*, that this was a valid covenant and did not amount to a clog or fetter on the right of redemption. **Muhammad Abdul Hamid v. Jai Raj Mal**, A. W. N. (1906), 267 = 3 A.L.J. 768.

STANLEY, C.J. and RUSTOMJEE, J.

(20) *N. W. P. Tenancy Act (I of 1901), S. 20—mortgage of occupancy holding—Redemption of a prior valid mortgage—rights of mortgagees.*

A usufructuary mortgage of an occupancy holding was executed after the passing of the North-Western Provinces Tenancy Act. The mortgagee sued to redeem a prior mortgage of the same holding, whose mortgage was executed before the passing of the Act. *Held*, that the mortgage, under which the plaintiff claimed, was invalid and unlawful, as contravening S. 20 of the Act, that the plaintiff had acquired no right under his mortgage and was not entitled to redeem the prior mortgagee, whose mortgage was valid under the law. **Banmall Pande v. Bisheshar Singh**, 3 A.L.J. 731 = A.W.N. (1906), 300.

STANLEY, C. J. and KNOX, J.

References:—26 A.W.N. (1906), 182 = 3 A.L.J. 476, F. 15 A. 219, 26 A. 78, R.

(21) Suit for redemption of an alleged usufructuary mortgage executed in 1781 for a term of 70 years—Applicability of the period of limitation under S. I (15) and S. VIII of Act XIV of 1859—See LIMITATION ACT (XIV of 1859), No. 1, 3 A.L.J. 113.

(22) Suit for redemption of usufructuary mortgage—Right of mortgagee to costs of improvements—Damages for planting of groves by tenants with mortgagee's permission, claim against mortgagee for—See TRANSFER OF PROPERTY ACT, No. 55, 9 O.C. 18.

Mortgage.—(Continued).**J—13.—(Redemption).—(Concluded).**

(23) Right to redeem a co-mortgagor redeeming the entire property—See TRANSFER OF PROPERTY ACT, No. 96, 9 O.C. 91 (B.)

(24) Right to redeem after decree absolute—See TRANSFER OF PROPERTY ACT, No. 78, 3 C.L.J. 533.

(25) Suit by one member of a joint Hindu family—second suit by other, members—See RES JUDICATA, No. 15, 3 A.L.J. 644.

(26)—See CIV. PRO. CODE, No. 305, 9 O. C. 254.

(27) Power of appellate Court to enlarge time for redemption—See TRANSFER OF PROPERTY ACT, No. 97, A.W.N. (1906), 203.

(28) Suit by a purchaser of equity of redemption for possession of mortgaged property—Value for purposes of appeal—See LIMITATION ACT, No. 102, 130 P.R. 1906.

(29) *Bona-fide purchaser from mortgagee, redemption from—Ostensible owner—Suit to redeem brought more than twelve years after sale*—See LIMITATION ACT, No. 98, 9 O.C. 373.

(30) Suit for redemption on mortgage by conditional sale—grant of time to the judgment-debtor for payment—power of Court to extend time—See TRANSFER OF PROPERTY ACT, No. 95, 2 N.L.R. 137.

(31) Covenant to pay interest at "2 per cent"—Construction—See INTEREST, No. 21, 28 A. 724 (P.C.)

(32) Decree for sale against Hindu father—Sons not made parties—Right of sons to sue for redemption—See HINDU LAW (JOINT FAMILY), No. 9, 2 A.L.J. 647.

(33) Effect of mortgagee purchasing a part of the mortgaged property, on the right of redemption—See TRANSFER OF PROPERTY ACT, No. 45, A.W.N. (1905), 225.

(34) Right of mortgagor of an undivided share to redeem the entirety—See CIVIL PRO. CODE, No. 9, 7 Bom. L.R. 912 = 2 C.L.J. 413.

(35) Decrees for—of mortgages in the Punjab—should be without any time limit for payment—See DECREE, No. 2, 100 P.R. 1905.

See, also, I, 699-712; Court Fees Act, No. 7; Limitation Act, No. 138 and Transfer of Property Act, Nos. 22, 24, 44, 47, 69 and 72.

Mortgage.—(Continued).

———14.—(Sale).

- (1) *Sale by first mortgagee—Effect—Rights of puisne incumbrancers who were parties—Sale-proceeds, lien on—Withdrawal of money by third mortgagee—Suit to enforce lien by second mortgagee—Limitation—Limitation Act (XV of 1877), Sch. II Art. 132—Civ. Pro. Code, Ss. 244, 295—Transfer of Property Act (IV of 1882), S. 73.*

When property is sold under a decree obtained by a first mortgagee in a suit, in which the puisne incumbrancers were parties, it passes into the hands of the purchaser discharged from all incumbrances. But the rights of the puisne incumbrancers are not extinguished or discharged by the sale but transferred thereby to the surplus sale-proceeds.

Where a second mortgagee, who had been made a party in a first mortgagee's suit, took no steps to enforce his lien on the surplus sale proceeds, but, subsequently, a third mortgagee, who had notice of the second mortgagee's claim brought a suit on his mortgage without making the second mortgagee a party and withdrew the surplus sale-proceeds in satisfaction of his mortgage:—

Held (SALE, J. agreeing with HENDERSON, J.)—That a suit brought on his mortgage by the second mortgagee wherein he seeks to enforce his lien on the surplus sale-proceeds in the hands of the third mortgagee is governed by Art. 132 of Sch. II of the Limitation Act and not by Art. 120. **Berham Deo Prasad v. Tara Chand**, 9 C.W.N. 989—33 C. 92.

SALE, HENDERSON and GELDT, JJ.

References.—5 C.W.N. 356 and 27 C. 180. *Itfd. to.*

- (2) *Mortgages—Different suits on one mortgage only—C.P.C., S. 43—Transfer of Property Act, S. 85.*

It is not competent to a holder of two mortgages on the same property from the same person to maintain a suit on the latter only for sale of the property subject to the prior mortgage. **Keshavaram Dulayram v. Ranchhod Fakira**, 7 Bom. L.R. 811=30 B. 156.

RUSSELL and ASTON, JJ.

References.—25 M. 108; 13 A. 412; 25 B. 161; 25 I. A. 118, R.

- (3) *Sale of property on first mortgage—purchase by decree-holder—Suit on second*

Mortgage.—(Continued).

———14.—(Sale).—(Continued).

mortgage—one mortgagee the same as first—Sale of property for a second time.

The property in dispute was mortgaged first to M, then to M and S and then to the appellant. M brought a suit for sale upon the first mortgage, obtained a decree, sold the property and purchased it himself. M and S then brought a suit upon the second mortgage and obtained a decree. To this suit the appellant was a party. *Held*, that M and S could again sell the property which was sold in execution of the decree on the first mortgage, inasmuch as M, by his purchase, did not become full owner, as the property was subject to two other mortgages. **Mulldhar v. Sher Singh**, 3 A.L.J. 238=A.W.N. (1906), 112.

KNOX, J.

- (4) *Decree—Simple money decree—Purchase by decree holders—Possession—Rights of parties.*

The plaintiffs respondents obtained a decree for sale and an order absolute under a mortgage executed by one R. H. H. C., a son of R. H. on the sole ground that he had not been impleaded by the mortgagees, obtained a decree, dated the 6th July, 1898, declaring that his share in the family property was not liable to sale. Notwithstanding the latter decree, the plaintiffs sold the entire mortgaged property and themselves purchasing, obtained possession. Next J. K., the holder of a simple money decree against R. H. and H. C. brought to sale a six-pie share together with the equity of redemption of certain land in one of the mortgaged villages and purchased himself. J. K. then sued the plaintiffs for possession, obtained a decree on the 17th December, 1903, subject to any rights which the plaintiffs in the present case might have over the property, and in execution of his decree, was given possession of the six-pie share.

Held, that although the plaintiffs' purchase in respect of the property, covered by J. K.'s decree must be treated as a nullity, their general rights as mortgagees were safe-guarded by the terms of that decree, and S. 73 of the Code of Civil Procedure could not bar the plaintiffs' right to bring the present suit.

Held, also, that the fact that the plaintiffs had purchased a portion of the mortgaged property did not limit them to a right to sue for a proportionate part only of the mortgage

Mortgage.—(Concluded).**———15.—(Sale).—(Concluded).**

debt (a). **Jagal Kishore Sahu v. Harbans Chaudhri**, A.W.N. (1906), 208 = 3 A.L.J. 791.

STANLEY, C.J. and KNOX, J.

Reference.—22 A. 284, D.

(5) Conditional decree in a suit on a, puts an end to the suit—See LIMITATION ACT (XV of 1877), No. 121, 11 C.W.N. 156.

See, also, I, 712-718; Civil Pro. Code, No. 294; Court Fees Act, No. 4; Mortgage (Redemption), No. 12; Mortgagee, No. 1; Sale in Execution of Decree, No. 3; and Transfer of Property Act, Nos. 32, 43, 56 and 71.

Mortgage-Decree.

See I, Civil Pro. Code, No. 108.

Mortgage-Suit.

See I, Civil Pro. Code, No. 50.

Mortgagees.

(1) Tender of *patta* by mortgagees of parts of a Zamindari whether to be joint or several—See ACT VIII OF 1865 (RENT RECOVERY, MADRAS), No. 1, 16 M. L. J. 6.

(2)—paying off after sale an anterior incumbrance affecting the property, rights of—See TRANSFER OF PROPERTY ACT, No. 81, 20 M. 87.

(3) Issue to mortgagor of notice of foreclosure by, within the period of redemption, whether valid and effective—See MORTGAGE (FORECLOSURE), No. 3, 119 P.R. 1906.

Mortgagor.

Issue of notice of foreclosure to, before expiry of period of redemption, whether valid and effective—See MORTGAGE (FORECLOSURE), No. 3, 119 P.R. 1906.

Mortgagor and Mortgagees.

(1) Acquisition of adverse titles by mortgagee—*Estoppel*.

A person, who lawfully came into possession of land as mortgagee, cannot, by setting up during the continuance of such relation, any title adverse to that of the mortgagor, acquire by prescription, title as owner or any other title inconsistent with his status as mortgagee (a). **Kakhami Nachiar v. Ramachandra Dorai**, 16 M.L.J. 5.

WHITE, C.J. and SUBRAHMANIA AIYAR, J.

Mortgagor and Mortgagees.—(Continued).

Reference.—(a) 25 M. 507 at p. 511, R.

(2) Covenant in a usufructuary mortgage for payment of *kist* by mortgagee—Subsequent enhancement of *kist*—Suit by mortgagor for excess *kist* paid, maintainability of—

Under a usufructuary mortgage obtained from the plaintiff, defendant was to pay the Government revenue payable on the land mortgaged to him and to take the profits in lieu of interest without reference to whether the profits were more or less in particular years. The revenue on the land was subsequently enhanced and plaintiff had to pay the excess over the original *kist*, to recover which excess he instituted the present suit against the defendant. *Held*, that the revenue payable under the settlement in force on the date of the mortgage was all that the mortgagee undertook to pay, the ultimate responsibility in respect of any addition to land revenue devolving on the mortgagor (a). **Krishniah v. Arappuli Iyer**, 16 M.L.J. 28.

SUBRAHMANIA AIYAR and BOUDAM, JJ.

References.—(a) 22 B. 440 and L.R. 9 I.A. at pp. 68 and 69, F.

(3) Joint mortgage—Further charge allowed by mortgagee in favour of one of the two co-mortgagors—Suit by the other to redeem his share—Payment can be compelled of his share of the original debt alone.

Plaintiff, one of two co-mortgagors, brought the present suit for redemption of her one-half share of the mortgaged properties on payment of half the mortgage-debt. Defendants declined to allow such partial redemption but offered to let plaintiff redeem the whole on payment not only of the entire mortgage-debt, but also certain other sums due to them under instrument of further charge executed in their favour by the plaintiff's co-mortgagor. Plaintiff repudiated all liability in respect of the said further charges. The first Court passed a decree for redemption of the whole on payment of the total amount due on account of the original mortgage and the further charge. On appeal, the Divisional Judge held that, by allowing the further charges to be created by one of the original mortgagors, the defendants had practically destroyed the indivisibility of their original mortgage-lien over the whole land for the entire mortgage-debt and decreed redemption of one-half on payment of half the mortgage-debt

Mortgagor and Mortgagee. (Continued).

in terms of the plaintiff's claim. Upholding the latter's decree, *held* cases in which the mortgagee, by his own act, has destroyed the oneness of the security (e.g.) where he buys part of the mortgaged property himself, are exceptions to the general rule as to the usual indivisibility of a mortgage-debt. In such cases, to allow the mortgagee to throw the burden of the entire debt on the portion not purchased by him would be contrary to equity and violate an important principle of the law of mortgage, viz., that, in the absence of special circumstances, the mortgage-debt is to be regarded as apportioned over the whole of the mortgaged property. These principles applying to purchases of part of the mortgaged property by the mortgagee should also be extended to cases of further charges taken by the mortgagee. The defendants, in this case, have taken such a further charge and have acquired a special interest in a part of the mortgaged property. The indivisibility of the mortgage has thus been destroyed by their own action entitling the plaintiff to redeem his share of the properties on payment of a proportionate share of the original debt. **Saran Das v. Atar Bibi**, 91 P.R. 1905 : 44 P.L.R. 1906.

CHATTERJI and KENNINGTON, JJ.

- (4) *Mortgage of occupancy fields by tenants to landlord—Suit for foreclosure—Wrongful possession obtained by landlord—Liability of landlord to account for profits as mortgagee in possession.*

Plaintiff, a mulguzar, took a mortgage of the lands of his occupancy tenants and sued for a decree for foreclosure. Two years before the suit, plaintiff had wrongfully ejected the tenants and entered into possession of the lands and defendants contended in this suit that he was bound to account to them (mortgagors) for the profits he made out of the lands after he trespassed upon them and that such profits must be set off against the mortgage-debt. *Held*, that the position of a mortgagee is not adverse (a) to the mortgagor and that the plaintiff, who took possession, being the mortgagee, took possession as mortgagee and the fact that he was also landlord does not make his taking possession amount to an ejection of his tenants and that he was, therefore, bound to account to the defendants for the profits of his possession (b) **Prabhudan v. Bhikulal**, 2 N.L.R. 92.

BATTEN, A. J. C.

Mortgagor and Mortgagee. (Continued).

References.—(a) 6 C.P.L.R. 109, 10 C.P.L.R. 65 and 18 A. 329, R. (b) 7 W.R. 90 and 16 B. 184, F.

- (5) *Notice of foreclosure, who is entitled to—'Legal representative', meaning of the term, in S. 8 of Regulation XVII of 1806—Person possessing interest in the equity of redemption at the date of the notice of foreclosure, rights of.*

Apart from special legislation, any person deriving title from the mortgagor, subsequent to the mortgage, is not entitled to notice of foreclosure, but such a person being a 'legal representative,' of the mortgagor under regulation XVII of 1806 is entitled, as such representative, to the said notice of foreclosure. The words, 'legal representative', in S. 8 of Regulation XVII of 1806, include any person who, at the date of the notice, possesses an interest in the equity of redemption, and a transferee from the mortgagor, subsequent to the mortgage, whether he be a purchaser or a puisne mortgagee, is entitled to be served with the notice of foreclosure, in order that he may have an opportunity of coming in to redeem the mortgage sought to be foreclosed, provided the transfer to him was prior to the date of the notice to the mortgagor; but, if the title of such transferee has arisen subsequent to the notice, he is bound by the notice of foreclosure to the mortgagor, and, equally with the mortgagor, would be barred and concluded by the foreclosure proceedings. **Bhimraj Deokisan v. Mt. Rahi**, 2 N.L.R. 113.

BATTEN, A. J. C.

References.—11 W.R. 548; 23 W.R. 25, 15 B. L.R. 84; 23 W.R. 96, 15 B.L.R. 28; and 1 A. 499; B.

- (6) *Registered and unregistered deeds—Priority—Mortgage—Execution sale—Auction purchaser—Conveyance.*

Where A claims title to property by purchase under a registered conveyance from the owner, and B claims title to the same property as purchaser at a sale held in execution of a decree obtained on a prior unregistered mortgage granted by the owner, A is entitled to priority, if he took without notice of the mortgage. **Sarat Chandra Sil v. Sheikh Meher**, 4 C. L. J. 490.

RAMPINI & MOOKERJEE, JJ.

Reference :—28 C. 139, F.

Mortgagor and Mortgagee.—(Continued).

(7) Suit to enforce a mortgage—Scope of enquiry—Necessary parties to the suit—Misjoinder—Multifariousness—See CIVIL PROCEDURE CODE, No. 55, TRANSFER OF PROPERTY ACT, No. 66 and MORTGAGE (GENERAL), No. 3, 3 C.L.J. 205.

(8) Suit not maintainable by usufructuary mortgagee for money, when the mortgaged property is lost owing to his own default—See TRANSFER OF PROPERTY ACT, No. 52, 3 C.L.J. 220.

(9) Right of mortgagee to costs of improvements in a suit for redemption—See TRANSFER OF PROPERTY ACT, No. 55, 9 O.C. 18.

(10) Decree against mortgagor passed before Transfer of Property Act—Execution of decree by mortgagee—Attachment and sale of unhypothecated property—Validity of—See MORTGAGE (GENERAL), No. 4, 3 A.L.J. 95.

(11) Liability of mortgagor to pay cost of construction of wells, when the mortgagee has purchased a portion of the equity of redemption—See MORTGAGE (REDEMPTION), No. 10, 3 A.L.J. 435.

(12) Liability of Mortgagor to pay amount of enhanced revenue, when such enhancement is made by Government subsequent to the mortgage—See MORTGAGE (REDEMPTION), No. 10, 3 A.L.J. 435.

(13) Surrender of mortgaged holding by occupancy tenant, effect of, on rights of mortgagee—See OCCUPANCY TENANT, No. 1, 2 N.L.R. 170.

(14) Mortgage by *Shikmi*-tenure holder—Merger of *mokarari* interest in the *Shikmi* tenure—Right of mortgagee to the merged interest—See Merger, No. 1, 33 C. 1212.

(15) Suit against mortgagor for land revenue advanced, whether within jurisdiction of Revenue Court. See ACT XVI OF 1887 (PUNJAB TENANCY), No. 11, 126 P. R. 1906.

(16) Part payment by mortgagor after transfer of equity of redemption, whether extends time as against transferee—See LIMITATION ACT (XV OF 1877), No. 32, 11 C.W.N. 107.

(17) Mortgage of occupancy rights by tenant—Mortgagee only a tenant-at-will after the death of mortgagor-tenant—Lapse of time cannot create rights of occupancy in mortgagee—See ACT XVI OF 1887 (PUNJAB), No. 18, P.R. 1905 (Rev.)

Mortgagor and Mortgagee.—(Concluded):

See, also, I, 726-728; *Adverse-Possession*, No. 1; *Limitation*, No. 21; *Limitation Act*, No. 33; *Mortgage (Redemption)*, No. 19; *Mortgage (Miscellaneous)*, No. 21; *Registration Act*, No. 12; and *Transfer of Property Act*, No. 43.

Movable Property.

(1) Pledge of—even if unaccompanied by possession is valid—See PLEDGE, No. 1, 8 Bom. L.R. 344.

(2) Fraudulent transfer of, validity of,—See TRANSFER OF PROPERTY ACT, No. 20, 16 M.L.J. 427.

Mul-raiyat.

—See I, *Sonthal Pergannas*, No. 1,

Municipality.

See I, *Nuisance*, No. 1.

Municipalities (Bengal).

See ACT III OF 1884 (BENGAL).

Municipalities (N.W.P. & Oudh).

See ACT I OF 1900 (N.W.P. and OUDH).

Municipalities Act (District Madras).

See ACT IV OF 1884 (MADRAS).

Munsarim.

See I, 729.

Murder.

—committed with the object of succeeding to the victim's property—Exclusion of murderer and his descendants from succeeding to such property—See INHERITANCE, No. 1, 41 P. R. 1906.

Mustagir.

See I, *Sonthal Pergannas*, No. 1.

Native Christians.

See I, 729.

Native States.

Relation of British India with—how ascertained—See SOVEREIGN POWERS, No. 1, 10 C.W.N. 361.

Natural rights.

—of an owner of land—Right to protect against water flowing from a highway into his land—See ACT IV OF 1884 (MUNICIPALITIES, MADRAS), No. 1, 1 M.L.T. 333.

Nasrana.

See *I, Act XXII of 1886 (Oudh Rent), No. 3.*

Negligence.

—of carriers—damages done to goods, after removal from ship's tackle.—See **CARRIERS**, No. 1, 1 M.L.T. 387.

See, also, *I, 729-731; and Common Carriers, No. 1.*

Negotiable Instruments.

- (1) *Right of holder to give title to—Negligence does not affect the title of a person taking a negotiable instrument in good faith—Good faith, meaning of—Estoppel affecting the holder of negotiable instrument—Practice.*

The holder of a negotiable instrument has power to give title to any person honestly acquiring it, and it is the very essence of a negotiable instrument that the person in possession of it may be treated as having authority to deal with it, be he agent or otherwise, unless something is known to the contrary.

Mere negligence does not invalidate the title of a person taking a negotiable instrument in good faith and for value. If there be anything, which excites suspicion that there is something wrong in the transaction, the taker of the instrument is not acting in good faith, if he shuts his eyes to the facts presented to him, and puts the suspicions aside without further inquiry.

If the holder of negotiable instruments gives them to another, with authority to that other to raise money upon them for his own purposes, he is estopped from setting up his right to the negotiable instruments, adversely to those, who have lent money on the security of the instruments and the faith of the authority of the owner. **Raghavji Vissal v. Narandas Parmanandas**, 8 Bom. L.R. 921.

CHANDAVARKAR, J.

- (2) *Presumption as to payments by—Payment of interest on amounts secured by—Installment payments of debt when allowable.*

Though the general effect of giving and taking a bill or a note is that the payment by the instrument is conditional, there is nothing to prevent its being given and taken as absolute payment, if the parties so intend. It is a question of fact what the intention of the parties was.

Where cheques or bills are eventually honored, the payment then made relates back to the time

Negotiable Instrument.—(Concluded).

when the document was delivered (a). In such case, interest on the amount paid runs from date of the delivery of the document.

Under S. 210, Civ. Pro. Code, the Court may grant an instalment decree only on sufficient reasons shown. Mere inability to pay, or the fact of being hard pressed, is, by itself, no sufficient reason for not requiring prompt payment (b). Where a defendant shows *bona fides*, by offering to pay a fair proportion of his debt, a reasonable time may properly be granted to enable him to pay the residue. **Mohomad Akbar Khan v. R. B. Kasturchand Daga**, 2 N. L.R. 179.

DIKAK-BROCKMAN, J. C.

References.—(a) 67 L. J. Ch. 694, 26 M. 526, 30 B. 27, 29 A. 54, 3 M. I. A. 422 (P.C.), R; (b) 2 A. 129, R.

Negotiable Instruments Act.

See under **ACT XXVI OF 1881 (NEGOTIABLE INSTRUMENTS)**.

Newspaper.

See *I, Limitation Act, No. 62.*

New trial.

Rehearing of suit decreed *ex parte*—See **ACT XV OF 1882 (PRESIDENCY SMALL CAUSE COURTS)**, No. 1, 3 C. L. J. 199.

Next friend.

- (1) *Minor appellant—Death of next friend pending appeal—Omission to appoint new next friend, mere irregularity—Civil Pro. Code, S. 578.*

Held, where the next friend of a minor appellant died during the pendency of an appeal, and the appeal was decreed in his favour without any person being appointed to act as his next friend, that the omission to make such appointment was a mere irregularity, and as no one was prejudiced thereby, the decree passed should not be disturbed. **Bholai Ram v. Ajudhia Prasad**, 3 A.L.J. 81.

STANLEY, C.J. and BURKITT, J.

- (2) *Right of unadjudged lunatic to sue by—See CIV. PRO. CODE, No. 246, 3 L. B. R. 169.*

Non-joinder of parties.

- (1) *Objection as to—cannot be raised for the first time in appeal—See CIV. PRO. CODE, No. 43, 2 N.L.R. 45.*

Non-Joinder of parties.—(Concluded).

(3) Effect of—in appeal in a suit for rent—See **APPEAL (PARTIES)**, No. 1, 10 C.W.N. 981.

(3) Suit by a manager of a joint Hindu family—Omission to make other members parties to the suit—See **HINDU LAW (JOINT FAMILY)**, No. 15, 69 P.R. 1906.

(4) Joinder of minor plaintiff after expiry of time for bringing suit, effect of—See **LIMITATION ACT**, No. 37, 33 C. 1079.

See, also, *I, 731-732* ; *Civil Pro. Code*, No. 50 ;
Rent, No. 8 ; *Res Judicata*, No. 29 ;
and Transfer of Property Act, Nos.
42 and 72.

N.W.P. Rent Act.

See **ACT XII OF 1881 (N.W.P.)**

N.W.P. Revenue Courts.

See **ACT XVI OF 1865 (N.W.P.)**

N.W.P. Tenancy Act.

See **ACT II OF 1901 (N.W.P.)**

N.W.P. & Oudh Land Revenue Act.

See **ACT XIX OF 1873 (N.W.P. & OUDH)**.

N.W.P. & Oudh Land Revenue Act.

See **ACT III OF 1901 (N.W.P. & OUDH)**.

N.W.P. & Oudh Municipalities.

See **ACT I OF 1900 (N.W.P. & OUDH)**.

Notice.

(1)—of unregistered conveyance—Holder of subsequent registered conveyance affected with—Euitable rights to possession—Priority—See **REGISTRATION ACT**, No. 4, 3 A.L.J. 100.

(2) Person, of whose interest a mortgage has had—would not be bound by the mortgage decree unless they were parties to the suit by the mortgagee—See **HINDU LAW (JOINT FAMILY)**, No. 4, 3 C.L.J. 12.

(3)—to judgment-debtor, whether necessary on application for execution of a decree for perpetual injunction—See **CIV. PRO. CODE**, No. 101, 3 C.L.J. 112.

(4) Service of—for the validity of a sale under Act I of 1895—Necessity for—See **ACT I OF 1895 (BENGAL PUBLIC DEMANDS RECOVERY)**, No. 1, 3 C.L.J. 280.

(5)—to quit—necessity of, for ejectment of under-ryyat by landlord purchasing occupancy rights of tenant—See **ACT VIII OF 1885 (BENGAL TENANCY)**, No. 12, 3 C.L.J. 155.

Notice.—(Continued).

(6) Omission to give—to parties cannot invalidate an award—See **ARBITRATION**, No. 1, 29 M. 44.

(7)—to quit, necessity of, in a suit for ejectment—Forfeiture of tenure by denial of landlord's title—See **SERVICE TENURE**, No. 1, 3 C.L.J. 274.

(8) Previous sub-mortgage created by a prior mortgagee by deposit of his mortgage-deed—Subsequent mortgage though registered cannot acquire priority apart from the question of notice—See **MORTGAGE (EQUITABLE MORTGAGE)**, No. 1, 10 C.W.N. 276.

(9) Necessity for—to defendant, application for execution of conditional decrees—See **EXECUTION OF DECREE**, No. 1, 10 C.W.N. 806.

(10)—to quit not necessary where the defendant is a trespasser—See **ACT VIII OF 1885 (BENGAL TENANCY)**, No. 65, 33 C. 136.

(11)—Omission by Judge to give—of his intended local inspection, effect of—See **LOCAL INSPECTION**, No. 1, 33 C. 138.

(12) Foreclosure—Irregular—When fatal—See **REGULATION XVII OF 1806 (BENGAL)**, No. 1, 74 P.L.R. 1906.

(13)—of suit against a Municipal Board for an injunction against a threatened act, necessity of—See **ACT I OF 1900 (N.W.P. and OUDH MUNICIPALITIES)**, No. 1, A.W.N. (1906), 107.

(14)—of claim—Suit for recovery of excess freight collected—To whom—to be sent—See **ACT IX OF 1890 (RAILWAYS)**, No. 1, A.W.N. (1906), 101.

(15)—to quit—Tenancy in respect of non-agricultural land—Sufficiency of notice—Monthly tenancy—See **LANDLORD and TENANT**, No. 13, 10 C.W.N. 841.

(16) Suit under Ss. 30 and 539, Civ. Pro. Code—Publication of notice, procedure for—See **CIV. PRO. CODE**, No. 39, 10 C.W.N. 867.

(17) Necessity of, to be given to the mortgagor before order absolute for sale—See **TRANSFER OF PROPERTY ACT**, No. 63, 4 C.L.J. 317.

(18) Suit for injunction—necessity for notice—object of legislature in insisting on notice. See **ACT IV OF 1884 (MADRAS MUNICIPALITIES)**, No. 1, 1 M.L.T. 333.

(19)—of suit to public officer—act purporting to be done in official capacity—See **CIV. PRO. CODE**, No. 237, 9 O.C. 275.

Notice.—(Concluded).

(20) Effect of—of ejectment given to tenants claiming under proprietary right—See *POSSESSION*, No. 6, 9 O.C. 292.

(21) Necessity of notice to under-tenants, prior to suing them in ejectment—See *SERVICE TENURE*, No. 8, 11 C.W.N. 46.

(22)—by the Collector under cl. 6 of S. 18 of Act I of 1894 (Land Acquisition), meaning of—See ACT I OF 1894 (LAND ACQUISITION), No. 10, 7 Bom. L.R. 697.

(23) Service of—under Act I of 1895 [Public Demands Recovery, (B.C.)]—Validity of—See ACT I OF 1895 (BENGAL PUBLIC DEMANDS RECOVERY), No. 2, 1 C.L.J. 588.

(24) Necessity of—in cases of resumption by Government, of land granted by it—See *RESUMPTION*, No. 1, 7 Bom. L.R. 735.

(25) Sticking up of—required by S. 8 of Regulation VIII of 1819 (Bengal)—Form and publication of—See *REGULATION VIII OF 1819 (BENGAL)*, No. 6, 32 C. 953.

See, also, I, Act VI of 1882 (Companies) (Imperial), No. 2; Act I of 1894 (Imperial), No. 3; Act XI of 1859 (Bengal), Nos. 2, 4 & 6; Act VI of 1880 (Bengal), No. 2; Act VIII of 1885 (Bengal), Nos. 11, 40, 41 and 42; Act I of 1895 (Bengal), Nos. 2, 3 and 5; Civil Pro. Code, Nos. 153, 154, 191; Ejectment suit, No. 2; Hindu Law (Religious Endowments), No. 2; Landlord and Tenant, No. 28; Master and Servant, No. 1; Mortgage (Miscellaneous), No. 18; and Transfer of Property Act, No. 79.

Nuisance.

(1) Noise—Legitimate trade—Malice.

Though a legitimate calling or trade may involve a serious nuisance by noise, it does not render that noise non-actionable, in other words noise does not necessarily become non-actionable merely because it is an incident of a legitimate trade.

In determining whether an actionable wrong has been committed and what measure of relief should be granted, the existence or non-existence of malice is a material consideration. *Harl Raghunath v. Yithal Dhendu*, 8 Bom. L.R. 89.

See LAWRENCE JENKINS, C.J. and ASTON, J. See, also, I, 734-735; *Easements*, Nos. 2 and 10.

Oath.

See I, 735.

Oaths Acts.

See under Act X of 1873.

Objections.

See I, Civil Pro. Code, No. 286.

Obstruction.

See I, *Easement*, No. 2.

Occupancy holding.

See I, Act VIII of 1885 (Bengal), No. 10; Act II of 1901 (N.W.P. Tenancy), No. 2; and Court Fees Act, No. 8.

Occupancy Rights.

(1) Extinguishment of—on purchase of proprietary rights by occupancy tenant—Effect of the purchase on his sub-tenant's holding.

If an occupancy tenant purchases the entire proprietary rights in a village, the occupancy rights are extinguished and therefore under ordinary circumstances any sub-tenancy which is grafted upon the tenancy is also determined and the sub-tenant can only become a tenant by virtue of a contract of tenancy entered into directly with the members of the proprietary body (a). But, however, though a surrender operates between the parties as an extinguishment of the interest which is surrendered, it does not so operate as to third persons, who, at the time of the surrender, had rights which such extinguishment would destroy and as to them, the surrender operates only as a grant, subject to their right, and the interest surrendered still has, for the preservation of their right, continuance. The sub-tenant, therefore, could only resist the claim for possession by pleading and proving the existence of some equity which would keep the occupancy rights alive, or by establishing a new contract or tenancy subsequent to extinguishment of such rights. *Sakaram Sonar v. Madho Rao*, 2 N.L.R. 29.

ISMAY, J.C.

Reference.—(a) 6 C.P.L.R. 74, F.

(2) Sister of a deceased occupancy tenant subject to Muhammadan Law, whether entitled to a share in the estate of the deceased—*Punjab Tenancy Act*, S. 59.

On the death of one N, his sister M, sued his widow and another for a third share in her brother's estate as due to her in accordance

Occupancy Rights.—(Continued).

with the principles of Muhammadan Law. Part of the estate comprised occupancy rights in certain gardens. As regards this, the first Court dismissed the plaintiff's claim holding that the deceased having been an occupancy tenant in the gardens, the succession to his rights therein must be governed by S. 59 of Act XVI of 1887 and not by custom or Muhammadan Law, and that under that section in the absence of male lineal descendants, the widow alone was entitled to succeed. On appeal plaintiff contended that she was entitled to a third share in the trees on the land even though she could claim no right to a share in the occupancy rights in the lands themselves and her contention was upheld by the Divisional Judge on the ground that the said S. 59 of the Tenancy Act related only to the succession to a right of occupancy in land, while the trees were governed by the ordinary rule of inheritance applicable to the parties (a).

On second appeal held, the rights in land of an occupancy tenant extend as well to the trees on the land, the rights to such trees being inseparable from the rights possessed by the tenant in respect of the land itself and therefore under S. 59 of the said Act the deceased's widow was alone entitled, to succeed not only to the land but also to the trees growing thereon (b). **Mall Muhammad v. Mariam Bi**, 52 P.R. 1906 = 102 P.L.R. 1906.

JOHNSTONE and RATTIGAN, JJ.

References.—(a) 15 P.R. 1892 (F.B.) and 46 P.R. 1893, D. (b) 61 P.R. 1873, 4 P.R. 1875, 9 P.R. 1904 (Rev.), R.

(3) *Acquisition of occupancy-right in a holding by a temporary lessee of the village-occupancy right, merger.*

When the temporary lessee of a village purchases an occupancy-holding within the village, during the term of his lease, the occupancy-right is not extinguished, but inures to his benefit even on the expiry of his lease. **Ram-rup Mahto v. H. Manners**, 4 C. L.J. 209.

MACLEAN, C.J. and PRATT, J.

(4) *Non-transferable occupancy holding—Co-sharer landlord's decree for rent—Sale in execution—Purchase by decree-holder—Purchase at mortgage-sale—Rights of purchasers.*

Occupancy Rights.—(Continued).

In a suit for recovery of *khas* possession by the plaintiff who had purchased an occupancy holding in execution of a mortgage decree, the defendant claimed under a lease from a co-sharer landlord who also had purchased the holding in execution of a decree for his share of the rent.

Held—That the question of transferability of the holding did not arise. **Ayenuddin Nasya v. Srish Chandra Banerji**, 11 C.W.N. 76.

(HOSE, C.J., and CASPERSZ, J.

(5) *Transferability of occupancy holding—Custom and usage, proof of.*

To prove a custom or usage that occupancy holdings are transferable in any locality, it is not sufficient to shew simply that such holdings are sold in the village or neighbouring villages. The essence of a usage of transferability is that transfers made to the knowledge of, but without the consent of, the landlord are valid and must be recognised by him (a).

When occupancy holdings are not transferable by custom, the person who purchases them in execution of a money-decree purchases nothing. They are not transferable as between the judgment-debtor and the decree-holder. **Peary Mohan Mukerjee v. Jote Kumar Mukerjee**, 11 C.W.N. 83.

RAMPINI & WOODROFFE, JJ.

Reference :—(a) 8 C.W.N. 172, F.

(6) *Acquisition of*—See ACT VIII OF 1885 (BENGAL TENANCY), No. 8, 3 C.L.J. 285.

(7) *Whether a raiyat taking a zuripeshgi lease construed as a cultivating lease divests himself of his rights to acquire—in the land*—See ACT VIII OF 1885 (BENGAL TENANCY), No. 15, 10 C.W.N. 351.

(8) *Mortgage of*—by tenant no abandonment thereof—See LANDLORD and TENANT, No. 9, 36 P.L.R. 1906.

(9) *Sale of*—by tenant—Right of landlord to eject—See ACT VIII OF 1885 (BENGAL TENANCY), No. 30, 3 C.L.J. 348.

(10) *Homestead land of raiyat*—See ACT VIII OF 1895 (BENGAL TENANCY), No. 70, 10 C.W.N. 944.

(11) *Succession to*—not to be restricted to relations within the village of the deceased tenant—See CUSTOMS (PECULIAR TO PUNJAB), No. 60, 128 P.L.R. 1906.

Occupancy rights.—(Concluded).

(12) Mortgage of—See ACT II OF 1901 (N.W.P. TENANCY), No. 5, 3 A.L.J. 691.

(13) Whether—can be acquired by under-tenants in the case of a service tenure—See SERVICE TENURE, No. 3, 11 C.W.N. 46.

(14) Mortgage of—by tenant—Holding by mortgagee after death of the mortgagor—only of a tenant-at-will not of an occupancy tenant—See ACT XVI OF 1886 (PUNJAB), No. 1, 8 P.R. 1905 (Rev).

Occupancy tenant.

(1) Mortgage by—Rights of mortgagee, effect of surrender of the mortgaged holding on.

The predecessor in interest of some of the defendants had mortgaged his absolute-occupancy holding in favor of the plaintiff. After his death, his heirs surrendered a part of the holding in favor of their landlord and this suit was instituted by the plaintiff to foreclose the mortgage, making the landlord also a party. In modification of the decree of the first Court, the lower appellate Court substituted a foreclosure decree for the entire holding. On second appeal by the landlord, *held*, that, where an absolute-occupancy tenant has once validly mortgaged his holding, a subsequent voluntary surrender to the landlord cannot, in any way, operate so as to affect the rights of the mortgagee. **Bhuray Brahmin v. Lala Vishwanath**, 2 N.L.R. 170.

ISMAY, J.C.

References:—11 C.P.L.R. 5, F. 18 A. 354, 27 A. 82 & 27 M. 401, R.

See, also, I, *Landlord and Tenant*, No. 20.

Official Assignee.

See I, *Insolvency Act* (11 and 12. Vic. Ch. 21), No. 1.

Orasa Child.

See I, *Buddhist Law* (Inheritance), No. 6.

Order absolute.

Effect of an—for sale under S. 80 of the Transfer of Property Act, with regard to anterior encumbrancers—See TRANSFER OF PROPERTY ACT, No. 81, 29 M. 37.

See, also, I, *Limitation Act*, No. 131.

Oudh Estates Act.

See ACT I OF 1869 (OUDH).

Oudh Land Revenue Act.

See ACT XVII OF 1876 (OUDH).

Oudh Rent Act.

See ACT XXII OF 1886 (OUDH).

Oudh Sub-Settlement.

See ACT XXVI OF 1866 (OUDH).

Owner.

Claim in the capacity of, inconsistent claim as under easement—See ALTERNATIVE CLAIMS, No. 2, 4 C.L.J. 437.

Ownership.

Possession is *prima facie* proof of—See POSSESSION, No. 1, 8 Bom. L.R. 96.

See, also, I, *Penal Code*, No. 1-a.

Pachis Sawal.

See I, *Hindu Law* (Impartible Estate), No. 1.

Pakka adatia.

See I, *Custom of Trade*, No. 2.

Pakki adat.

Incidents of the system—See CUSTOM OF TRADE, No. 1, 7 Bom. L.R. 611.

Panchnama.

See I, *Evidence*, No. 8.

Pardanashin Ladies.

(1) See under MAHOMEDAN LAW (FAMILY ARRANGEMENT), No. 1, 8 Bom. L.R. 252.

(2) Case in which a lady was not treated as a Pardanashin—See BENAMI TRANSACTION, No. 3, 10 C.W.N. 570 (P. C.)

(3) Deeds executed by—Burden of proof—See MAHOMEDAN LAW (SUCCESSION), No. 2, 8 Bom. L.R. 781.

See, also, I, *Mortgage* (Miscellaneous), No. 13.

Parsi Intestate Succession Act.

See ACT XXI OF 1865.

Parsis.

—in the Mofussil—Usage of the community—Practice of the English Equity Court, how far applicable—See ACT XXI OF 1865 (PARSI INTESTATE SUCCESSION), No. 1, 7 Bom. L.R. 988.

See, also, *Limitation Act*, No. 22.

Parties.

(1) Persons of whose interest a mortgagee has had notice would not be bound by the mortgage decree unless they were—to the suit by the mortgagee—See HINDU LAW (JOINT FAMILY), No. 4, 3 C.L.J. 12.

Parties.—(Concluded).

(2) Waiver of objection as to want of—See **TRANSFER OF PROPERTY ACT**, No. 21, 8 A.L.J. 474.

(3) See JOINDER OF PARTIES.

See, also, *I, Appeal (Civil)*, No. 26; *Civil Pro. Code*, Nos. 50, 51 and 254; *Limitation Act*, No. 39; *Mortgage (Miscellaneous)*, No. 22; *Non-Joiner of Parties*, No. 4; and *Transfer of Property Act*, Nos. 43, 44.

Partition.

(1) *Plaintiff's suit for—dismissed—One of the defendants in the suit applying to have his share partitioned off—Contention disallowed—Practice.*

Where a plaintiff, who brings a suit for partition fails to establish his right to partition, it is not open to any of the defendants to claim, in the suit, partition, upon the ground that such defendant has a share in the property.

When a suit for partition is brought by a person alleging that it is undivided property and that he has a certain share in it, the law requires that, in order to enable the Court to ascertain such person's share, it must have before it, as parties to the suit, all the persons admittedly having, or claiming to have, shares in the property. The quantum of the share of the plaintiff must be determined with reference to the number of sharers and their respective shares. That is the reason of the rule. But where the case of the plaintiff fails on the preliminary ground that he has no right to a share at all, and that a suit for partition, is not maintainable at his instance, the person of the rule fails to apply. If the plaintiff is found to have no share at all, there is no suit for partition and consequently no necessity for determining the defendant's share. *Ashidbal v. Abdulla Haji Mahomed*, 8 Bom. L.R. 758.

CHANDAVARKAR, J.

References:—8 C. 551, 24 B. 128 and 23 B. 188, *Distd.*

(2) *Common village land for tethering cattle, whether open to partition among proprietors—*

Common land in a village, which the co-sharers have been in the habit of tethering cattle on, is not to be regarded as land dedicated as such to a common purpose. So, though the

Partition.—(Concluded.)

Record of rights, describing such lands as joint property, is silent as to their liability to partition, yet from the right of transfer of such lands provided for by the said Record, a right to bring them to partition is impliedly inferrible. *Makhan Singh v. Ishar Singh*, 186 P.R. 1906.

REID, C.J.

(3)—subsequent to mortgage of a share—Suit for redemption—Mortgagor entitled to decree for possession of an undivided share only and not specific plots—See **MORTGAGE (REDEMPTION)**, No. 3, A.W.N. (1906), 7.

(4) Suit for, jurisdiction value of, is the value of the entire estate sought to be partitioned—See **ACT VII OF 1887 (SUITS VALUATION)**, No. 5, 4 C.L.J. 509.

(5) Award directing—Stamp—See **STAMP ACT**, No. 2, 8 Bom. L.R. 869.

(6) Maintainability of suit for, between lessees from different co-sharers—See **POSSESSION**, No. 5, 11 C.W.N. 148.

(7) Suit for possession of *shamilat* land—Wrong entry in Revenue Records—See **LIMITATION ACT**, No. 88, 151 P.L.R. 1906.

(8) Registration of award operating as instrument of—See **REGISTRATION ACT (III OF 1877)**, No. 12-a, 160 P.L.R. 1906.

See, also, *I, 738, 739; cases under Hindu Law (Partition) and Landlord and Tenant*, No. 49.

Partition Act.

See under **ACT IV OF 1898 (IMPERIAL)**.

Partition-Decree.

See *I, 739 and Execution of Decree*, No. 32.

Partition-deed.

(1) Compulsorily registrable but unregistered—relating to both movables, and immovables, whether Court can refer to portion of, relating to movables only—See **REGISTRATION ACT (III OF 1877)**, No. 15, 119 P.L.R. 1906.

(2)—of both movables, immovables effect of non-registration of—See **REGISTRATION REGULATION (TRAVANCORE)**, No. 1, 21 T.L.R. 190.

Partition of Estates.

See **ACT VIII OF 1876 (BENGAL)**.

Partnership.

(1) Death of partner in a—liability of his estate for subsequent losses—Heir not liable

Partnership.—(Concluded).

unless he assents and substitutes himself in the place of the deceased—See **CONTRACT ACT**, No. 48, 8 BOM. L.R. 8.

(2) Suit for recovery of debt due to—Debt accrued due when a deceased partner was alive—Necessity of representatives of deceased partner as parties—See **CONTRACT ACT**, No. 20, 10 P. R. 1906.

(3) Participation in profits of business is not conclusive evidence of a—Intention of parties to be ascertained—See **CONTRACT ACT**, No. 46, 10 C.W.N. 818.

(4) Suit by surviving partner against heirs of deceased partner to make good their share of losses incurred by the partnership—See **LIMITATION ACT**, No. 66, 78 P.L.R. 1906.

(5) Suit for money on taking accounts of a dissolved—not to be decreed for defendant but dismissed though something was found due to defendants—See **CIV. PRO. CODE**, No. 98, 8 A. L.J. 238.

(6) Suit to recover debt due to a—under a contract with one partner only—Right of such partner to sue by himself—See **CONTRACT ACT**, No. 19, 127 P.R. 1906.

(7) Agreement of, entered into by licensee under **Excise Act XII of 1896**, whether valid—See **CONTRACT ACT**, No. 10, 114 P.R. 1906.

(8) Partner's right to use trade-mark of the firm—See **TRADE-MARK**, No. 1, 7 BOM. L. R. 272.

See, also, I, 739; Hindu Law (Joint Family), No. 11; Limitation Act, Nos. 19 and 37.

Part-payment.

See I, Civil Pro. Code, No. 93.

Party-wall.

See I, 740.

Pasture Land.

In a suit for possession of land by landlord, the fact of the land being—raises a presumption in favour of plaintiff that it is *mal*, and not *lakhiraj* land—See **LANDLORD AND TENANT**, No. 2, 10 C.W.N. 434.

Patni Tenure.

Sale for arrears of rent—Effect of agreement between parties—See **REGULATION VIII OF 1819 (BENGAL)**, No. 1, 33 C. 381.

Patta.

(1) Insertion of useless condition in a—does not make it *patta* bad—See **ACT VIII OF 1865 (RENT RECOVERY, MADRAS)**, No. 9, 16 M.L.J. 57.

(2)—to be issued by mortgagees of parts of a *Zemindari*, whether to be joint or several—See **ACT VIII OF 1865 (RENT RECOVERY ACT, MADRAS)**, No. 1, 16 M.L.J. 6.

(3) Mere grant of, whether confers new title—See **DECLARATORY SUIT**, No. 8, 21 T.L.R. 67.

Pauper.

Application for leave to appeal as a, right on dismissal of, to prefer appeal on proper stamp—See **CIV. PRO. CODE**, No. 236, 8 L. B. R. 194.

Pauper-suit.

See I, Civil Pro. Code, No. 231.

Payment out of consideration.

See I, Specific Relief Act, No. 10.

Payment out of Court.

See I, Civil Pro. Code, No. 112.

Pedigree.

See I, 740-741; and Evidence Act, No. 3.

Peishush.

Private agreement apportioning, not binding on Government—See **ACT I OF 1876 (MADRAS)**, No. 1, 16 M.L.J. 468.

Penal assessment.

See I, Revenue Recovery Act (Madrass), No. 1.

Penalty.

(1) Stipulation to pay a higher rate of interest when not a—See **CONTRACT ACT (IX OF 1872)**, No. 33, 10 C.W.N. 640.

(2) High rate of interest, in what cases a—See **Contract Act (IX of 1872)**, No. 31, 10 C.W.N. 1020.

See, also, I, Contract Act, No. 25.

Pensions Act (XXIII of 1871).

S. 13 ACT XXIII OF 1871.

S. 4— I, 744.

Perjury.

Liability of judgment obtained by deliberate—to be set aside in a fresh suit on the ground of fraud—See **RIGHT OF SUIT** No. 1, 16 M.L.J. 59.

Permanent occupancy right.

See I, Landlord and Tenant, Nos. 14 and 15.

Permanent tenure.

The holder of a—possesses all rights attaching to the lands from the centre of the earth to the sky—See **MINING RIGHTS**, No. 1, 8 C.L.J. 59.

Permanently settled estate.

Separate registration of alienated portion of,
—Jurisdiction of Collector—Private agreement apportioning *peishcush* not binding on Government—See ACT I OF 1876 (MADRAS), No. 1, 16 M.L.J. 468.

Plaint.

(1)—*amendment of—Decree—Error in description of plot.*

A plot of land, part of the subject matter of the suit, was wrongly described in the plaint and in the decree of the Court of first instance as No. 182, instead of 184. On discovery of the mistake in the appellate Court, an application was made for the amendment of the decree and if necessary, of the plaint. The lower appellate Court declined to alter the decree and passed no definite order on the prayer for the amendment of the plaint,

held, that the decree could not be amended, but the mere fact that an issue as to the particular number of the plot would have to be tried *de novo* was no reason for refusing the prayer for the amendment of the plaint. The Court should exercise its discretion in deciding whether or not the amendment of the plaint should be allowed and the plaintiff was entitled to a distinct order on the point. **Jivan Sahai v. Kalvan Mal**, A.W.N. (1906), 220.

AIKMAN, J.

(2) When a Court returns a—*as being beyond its jurisdiction*, it cannot be said that the suit has been legally instituted. A suit can be said to be *instituted* only when the plaint is presented to the proper officer of a Court having jurisdiction to try it—See LIMITATION ACT, No. 4, 9 O.C. 1.

(3) Improper amendment of—See CIV. PRO. CODE, No. 62, 3 C.L.J. 306.

(4) Description in—of property claimed—when misdescription not fatal—See ACCRETION, No. 1, 3 C.L.J. 560.

(5)—in suit for declaration, amendment of, into one for possession—Suit of inconsistent character—See PLEADINGS, No. 2, 2 N.L.R. 79.

(6) Suit by wrong person as plaintiff—amendment of—See CIV. PRO. CODE, No. 86, 10 C.W. N. 662.

(7) Verification and signing of—Plaint on behalf of Government signed and verified by Collector and signed and presented by a Pleader who was not a Government Pleader—See CIV. CODE, No. 302, 10 C.W.N. 911.

Plaint. (Continued).

(8)—filed intentionally in wrong Court—Return of—Duty of Court—See COURT FEES ACT (VII OF 1870), No. 5, 3 A.L.J. 511.

(9) Amendment of, involving alteration in relief, whether could be allowed—See CIV. PRO. CODE, No. 63, 185 P.B. 1906.

(10) Amendment of—Suit based on one cause of action giving rise to one set of a reliefs, conversion of, into one based on a different cause of action giving rise to another set of reliefs—See CAUSE OF ACTION, No. 6, 21 T.L.R. 356.

(11)—to be amended by Court, on order for payment of additional fees. See COURT FEES, No. 5, 21 T.L.R. 1.

(12) Amendment of—case in which amendment was disallowed in second appeal—See CIV. PRO. CODE, No. 257, 9 O.C. 275.

(13) Rejection of, after admission and registration, legality of—See CIV. PRO. CODE, No. 66, 4 C.L.J. 421.

(14)—in a suit relating to charity—Suit instituted by one person with the consent of the Advocate General—Amendment of—substitution of another plaintiff with the consent of the Advocate General—See CIV. PRO. CODE, No. 281, 8 Bom. L.R. 751.

See, also, I, 745-747; Civil. Pro. Code, Nos. 38, 46, 50, 67, 69, 70, 100, 115 and 243; Contract, No. 8; Contract Act, No. 17; Court Fees Act, No. 17; Land Revenue Act, No. 2; Limitation Act, Nos. 97, 102; Pleadings, No. 10; Regulation II of 1827 (Bombay), No. 1; Specific Relief Act, No. 21; and Transfer of Property Act, No. 75.

Plea.

(1) Right to sue—Medical practitioner—Plea in defence—Ignorance on improper treatment of the patient.

In an action by a medical practitioner to recover the amount of his fees, it is open to the defendant to lead evidence to show that he treated the patient ignorantly or improperly, which plea, if proved, furnishes a good defence to the action. **Domingo M. Parriera v. Gabriel F. Gonsalves**, 8 Bom. L.R. 93.

SIR LAWRENCE JENKINS, C.J. and BATTY, J.

See, also, I, Appeal (Second), No. 8; Landlord and Tenant, No. 29; Limitation Act, No. 9; Pleadings, No. 5; and Right of Suit, No. 23.

Pleader.

Suggestion as to a matter of fact by a, decision in appeal based on, *impropriety of—See EVIDENCE, No. 3, 11 C.W.N. 130.

See, also, *I, Act XVIII of 1879 (Imperial), No. 1; Civil Pro. Code, No. 285; Evidence Act, No. 36; Regulation II of 1827 (Bombay), No. 1.*

Pleader and client.

Champerty, *agreement by way of, between advocate and pleader—Professional misconduct—See ACT XVIII OF 1879 (LEGAL PRACTITIONERS), No. 1, 4 C.L.J. 262.

Pleader's Fee.

See *I, Regulation II of 1827 (Bombay), No. 1.*

Pleadings.

(1) A plaintiff ought not, by reason of his having claimed too much, to be precluded from recovering a proportionate amount, to which he is entitled, if the pleadings are sufficient to cover such a claim. The question as to whether a partial decree ought to be made in such a case is not one of indulgence to be granted or refused at the Court's discretion. **Malle Ahmad Wali Khan v. Mussamat Shamsi Jahan Begam**, 10 C.W.N. 626 = 3 A.L.J. 360 = 3 C.L.J. 481 = 1 M. L. T. 143 = 8 Bom. L.R. 397 = 16 M.L.J. 269 = 28 A. 482 (P.C.)

LORD DAVEY, SIR FORD NORTH, SIR ANDREW SCOTLE and SIR ARTHUR WILSON.

(2) *Plaint praying for declaration, amendment of, by adding prayer for possession—Whether amounts to changing character of suit—Amendment allowing barred relief to be claimed, whether legal.*

Plaintiff asked for a declaratory decree and for an injunction restraining the defendant, his landlord, from interfering with his possession of certain fields. Defendant pleaded, *inter alia*, that the plaintiff was not in possession of the fields claimed, and that the suit as framed was, therefore, untenable. Plaintiff then sought and obtained permission to amend his plaint by adding a prayer for possession and eventually obtained a decree in the Court of the additional Sub-Judge which was upheld in appeal by the District Judge.

On second appeal it was pressed that the amendment of the plaint should not have been allowed because at the time when the amendment was made the new relief asked for was barred by time and it was held that the amend-

Pleadings.—(Continued),

ment of a suit for a mere declaration into one for possession does not change the suit into one of an inconsistent character (a). The relief for declaration is, in most cases, for recovery of possession claimed as ancillary to the latter and there can be no inconsistency between the two. But no amendment of a plaint can be allowed under S. 53 of the Civ. Pro. Code where the effect of such amendment would be to deprive the defendant of the defence of limitation. **Shriram Sadasheo Balkrishna Joshi v. Ganpati Kumbi**, 2 N.L.R. 79.

ISMAY, J.C.

References.—(a) 5 Bom. L.R. 329, F. 16 M. 319, 18 M. 33 and 1 N.L.R. 117, R.

(3) *Pleadings and proofs, variance between, when material.*

Proofs must correspond with the allegations in the pleadings, but it is sufficient if the substance of the declaration is proved; no variance is material when the allegation and proof substantially correspond. **Balabhadra Persad Singh v. Najiban alias Basmatia**, 4 C.L.J. 370.

RAMPINI and MOOKETWEE, JJ.

References.—I.R. 19 I.A. 221 and 3 C.L.J. 481, F.

(4)—in plaint as to invalidity of a mortgage—Subsequent inconsistent pleadings, estoppel of—See ESTOPPEL, No. 1, 16 M.L.J. 5.

(5) Case of acquisition of title by prescription not made in plaint—Plaintiff cannot succeed on such case—See ADVERSE POSSESSION, No. 3, 3 C.L.J. 316.

(6) Recital of—in judgments—Admissibility of such judgments in evidence—See MAINTENANCE GRANT, No. 1, 3 C.L.J. 521.

(7) Taking before the Privy Council points not taken in the Court of first instance—See ACCRETION, No. 1, 3 C.L.J. 560.

(8)—making mention only of unsoundness of mind of donor—Whether evidence admissible to prove undue influence—See BENAMI TRANSACTIONS, No. 3, 10 C.W.N. 570 (P.C.)

(9) Whether the defence of purchase for valuable consideration without notice is available against a claim based on a legal title—See CIV. PRO. CODE, No. 36, 10 C.W.N. 662.

(10) Suit for pre-emption—allegation that the first demand was made for plaintiff by his

Pleadings.—(Concluded).

general attorney—*Mukhtarnmah* not filed
—Duty of Court—See **PRE-EMPTION**, No. 36, A.W.N. (1906), 177.

(11) Variation of—in course of evidence how far allowable—See **HINDU LAW (JOINT FAMILY)**, No. 14, 4 C.L.J. 56.

See, also, I, 748-752; *Act I of 1869 (Oudh Estate)*, No. 2; *Civil Pro. Code*, No. 304; *Contract Act*, No. 4; *Ejectment Suit*, No. 2; *Fraud*, No. 4; *Landlord and Tenant*, No. 29; *Practice (Mis. Cases)*, No. 19; and *Res Judicata*, No. 18.

Pledge.

(1) *Mortgage of movable property—Delivery of possession.*

A mortgage of movable property, even if accompanied by possession, is valid. *Damodar Lakshmidas v. Atmaram Narayan*, 8 Bom. L. R. 344.

JENKINS, C. J. and BATTY, J.

(2)—of bills of lading to a third party without notice of seller's claim for the price of goods. See **CONTRACT ACT (IX OF 1872)**, No. 35, 38 C. 547.

See, also, I, *Limitation Act*, No. 63.

Plene Administravit.

See I, *Hindu Law (Debts)*, No. 5.

Police Commissioner.

—See I, *Specific Relief Act*, No. 30.

Policy of Insurance.

See I, 753; and *Civil Pro. Code*, No. 60.

Political Agent.

The jurisdiction exercised by the Courts of the—and the Assistant Political Agents in Kathiawar is Political and not judicial—See **SOVEREIGN POWERS**, No. 1, 10 C.W.N., 861.

Pollions.

See I, *Hindu Law (Impartible Estate)*, No. 3. **Port Commissioners Act.**

See **ACT V OF 1870**.

Possession.

(1)—*Ownership—Value of possession.*

To recover possession, a plaintiff must show a better right in himself to possession than is in the defendant. He may, within the period prescribed by the *Limitation Act*, show this, in a case where he is dispossessed either by es-

Possession.—(Continued).

tablishing title or by showing a prior legal possession entitling him to be restored to the same.

Possession is *prima facie* proof of ownership; it is so because it is the sum of acts of ownership. This applies both to prior and to present possession.

Possession has a two-fold value: it is evidence of ownership and is itself the foundation of a right to possession. *Harl Khanda v. Dhendli Natha*, 8 Bom. L.R. 96.

SIR LAWRENCE JENKINS, C.J. and BATTY, J.

(2)—*of the trespasser; heritability of.*

Held: that possessory right even that of a trespasser is heritable. *Wajid Khan v. Bargahl Khan*, 9 O.C. 161.

CHAMBER, J.C.

References.—2 O.C. 8, 12 A. 51 (P.C.), 3 C. 224, and 1 Q.B. 1, R.

(3) *Suit for—defence of limitation—plaintiff to prove subsisting title—submerged land—constructive possession of true owners—Vis major.*

When the defendant to a suit for possession of land pleads adverse possession, it lies in the first instance upon the plaintiff to prove that he was in possession at some time within 12 years of the suit (a).

Where a party is dispossessed by *vis major*, e.g., floods, the constructive possession of the land, so long as the land remains submerged, is in the true owner (b). *Munshi Masbar Hasan v. Behari Singh*, 8 A.L.J. 567 = A.W. N. (1906), 284 = 28 A. 760.

STANLEY, C.J. and KNOX, J.

References.—(a) 14 A. 193, R. (b) 29 C. 518, R.

(4) *Suit for possession based on possessory title of plaintiffs' predecessor—plaintiffs never themselves in possession—Cause of action—Specific Relief Act, S. 9.*

Plaintiffs sued, as heirs, to recover certain property, which had been in the possession of their deceased father, without any legal title, and was appropriated by their brother, to the exclusion of the plaintiffs, and purchased by the defendants in execution of a decree against him and was in the peaceable possession of the defendants for a little less than twelve years.

Possession.—(Continued).

Per KNOX, J.:—*Held*, that, inasmuch as the plaintiffs had never, at any time, been in possession of the property claimed by them, their suit would not lie (a).

Per AIKMAN, J.:—*Contra*. The plaintiffs' father having held a possessory title—heritable and transferable—good as against all except the true owner, there was nothing to prevent his heirs bringing the present suit (b). **Shi Gopal v. Ayatha Nagam**, A.W.N. (1906), 264=8 A.L.J., 775.

KNOX & AIKMAN, JJ.

References :—(a) 24 A. 157, 26 M. 514, 27 A. 169, 12 A. 51, 20 C. 834, Dist.
(b) 13 A. 537, 24 A. 157, 27 A. 169, A.W.N. (1906), 184, 26 M. 514, 12 A. 51, R.

(5) *Joint owners—Separate leases by different co-sharers of lands in their exclusive possession—Right of one lessee to have joint possession with another—Right to partition—Equity.*

The owners of an *ejmali mehal* severally leased out lands in the exclusive possession of each to different lessees. One of the lessees, having obtained his lease on the *bona fide* belief that the land covered by it belonged in its entirety to his lessor, reclaimed and improved it and was then sued by the other for joint possession.

Held—That it would be inequitable to give the plaintiff the relief he asked for and his proper remedy was to bring a suit for partition. **Syed Ali v. Majab Ali**, 11 C.W.N.143.

GHOSH, C.J., and CASPERSZ, J.

(6) *Suit for proprietary—where tenant sets up under-proprietary rights against proprietor—Declaratory suit.*

In 1898, the plaintiff attempted to eject the defendants from certain land, by means of a notice of ejectment. The defendants objected to the notice on the ground that they were under-proprietors, not tenants of the land and the notice was cancelled on May 9th, 1898. In March 1905, the plaintiff brought a suit for proprietary possession of the said land.

Held, that the suit for proprietary possession was not maintainable. The proper course for a proprietor, against whom a person alleged to be a tenant sets up a claim to under-proprietary right, is to sue for a declaration (a). **Raja Mumtas Ali Khan v. Sarju Singh**, 9 O.C. 292.

Possession.—(Continued).

CHAMBER and EVANS, J.Cs.

References :—2 O.C. 79, 4 O.C. 314, 25 A. 1 (P.C.) and 3 O.C. 105, R.

(7) *Suit for—of land, by the Secretary of State against co-sharer in a village.*

Where plaintiff, Secretary of State, claimed possession of a piece of land, which was originally part of village B but had subsequently become part of village J, of which the defendant was a co-sharer, it was *held*, that the defendant, having been in possession of land for about 35 years, should not be ejected unless the title of the plaintiff was proved beyond reasonable doubt. **The Secretary of State for India in Council v. Thakur Mohar Singh**, 9 O. C. 301.

EVANS, J. C.

(8) In suits praying for exclusive possession only plaintiff may be allowed joint possession—See **HINDU LAW (JOINT FAMILY)**, No. 2, 8 Bom. L.R. 99.

(9) Whether possession obtained in execution of a decree subsequently set aside is "Wrongful possession"—See **LIMITATION ACT**, No. 67, 8 C. L.J. 182.

(10) Delivery of formal—in execution proceedings—suit for actual—See **CIVIL PRO. CODE**, No. 111, 3 A.L.J. 504.

(11) A *wakf* must divest himself of, in order to constitute a valid *wakf*—See **MAHOMEDAN LAW (WAKF)**, No. 7, 2 N.L.R. 158.

(12) Suit for—against trespasser—proof of plaintiff's title—possession good title against all but rightful owner—See **RIGHT OF SUIT**, No. 9, 9 O.C. 273.

(13) Suit for, maintainability of, subsequent to suit for *mesne profits*—See **CIV. PRO. CODE**, No. 58, 9 O.C. 322.

(14) Formal delivery of, effect of, on judgment debtor and against his co-sharer—See **SALE IN EXECUTION**, No. 1, 3 A.L.J. 659.

(15) Adverse—for over 12 years, effect of, on other titles, if any—See **DECLARATORY SUIT**, No. 8, 21 T. L. R. 67.

(16) Right of co-sharers of joint property to joint possession—See **JOINT PROPERTY**, No. 1 38 C. 1201.

(17) Wrongful—of a deceased person's estate, procedure under Act XIX of 1841 on complaint regarding—See **ACT XIX OF 1841 (IMPERIAL)**, No. 1, 138 P.R. 1906.

Possession.—(Concluded).

See, also, I, 754-755; *Court Fees Act*, No. 8; *Landlord and Tenant*, No. 22; *Mahomedan Law (Gift)*, No. 1; *Registration Act*, No. 14; *Right of suit*, No. 23; and *Specific Relief Act*, No. 1.

Posthumous chela.

Inheritance—appointment by widow of (Gosha-in)—See **HINDU LAW (INHERITANCE)**, No. 11, 3 A.L.J. 717.

Posthumous son.

Effect of birth of, on Hindu's will—See **HINDU LAW (WILLS)**, No. 8-a, 16 M.L.J. 491.

Power of Attorney.

(1)—authentication of a Notary Public of a—evidence of identity of executant—See **EVIDENCE ACT**, No. 8, 33 C. 625.

(2) Registration of—necessity of, to give validity to registration—See **REGISTRATION ACT** (1877), No. 21, A.W.N. (1906), 195.

See also, *Force Act*, No. 16; *Government Act*, No. 8; and *Rent Recovery Act* (VIII of 1865, Madras), No. 5.

Practice.

1.—OF HIGH COURT.

2.—PRIVY COUNCIL.

3.—MISCELLANEOUS CASES.

——1.—(of High Court).

(1) *Practice—Certifying Council.*

In certifying counsel in chamber matters under Rule 548, the Court has regard to the following circumstances:—(1) Whether notice has been given by either side of the intention to employ counsel; (2) Whether the matter to be dealt with involves the consideration of complicated facts or merely of simple facts; (3) Whether there arises any substantial question of law which has to be argued and discussed. **Zulekabal v. Ayeshabal**, 7 Bom. L.R. 753 = 30 B. 196.

TYABJI, J.

(2) High Court's power to call for records of its own motion for revision and pass orders—Power of revision where other remedy is open—See **CIVIL PROCEDURE CODE**, No. 127, A.W.N. (1905), 191.

See, also, I, 755-756; and *Civil Pro. Code*, No. 313.

——2.—(Privy Council).

(1) *Privy Council—Appeal—Practice—Concurrent judgments on facts—Disagreement on subordinate points.*

Practice.—(Continued).**——2.—(Privy Council).—(Continued).**

The Judicial Committee does not ordinarily entertain an appeal from concurrent judgments on a mere question of fact.

The mere fact that the two Courts do not agree on all the steps which lead to one and the same conclusion, is no reason for disregarding the above well-known rule.

That rule, however, is not an absolute rule; it presses upon the appellant with more or less weight according to the circumstances of the case, and the fact that the Courts have differed on some important but subordinate questions as matter to be taken into consideration in determining whether the evidence before the lower Courts should be reviewed in detail. **Rajah Chitpal Singh v. Bhairon Buksh**, 10 C. W. N. 225 = 1 M.L.T. 7 = 16 M.L.J. 76 (P.C.) = 28 A. 219.

LORD MACNAUGHTEN, SIR FORD NORTH, SIR ANDREW SCOBLE, SIR ARTHUR WILSON.

(2) *Fact, concurrent findings of, by lower Court—Judicial Committee, practice of—*

The Judicial Committee will not make a fresh examination of facts for the purpose of disturbing concurrent findings by the lower Courts, especially when such findings are based on facts, whose significance is best appreciated by Judges, most familiar with Indian manners and customs. **Kunwar Sanwal Singh v. Rani Satrupa Kunwar**, 8 C.L.J. 86 (P.C.) = 10 C.W. N. 230 = 1 M.L.T. 6 = 15 M.L.J. 77 = 28 A. 215.

LORD MACNAUGHTEN, SIR FORD NORTH, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

References.—21 C. 997 = 21 I.A. 168 at 166, F.

(3) *Refusal by High Court to grant leave to appeal to Privy Council—Application to Privy Council for special leave—Value of the matter for appeal, within S. 596.*

In a suit for damages for Rs. 80,000, on the original side of the High Court, no assessment of the amount of damages having been made by the Court, an appeal was preferred before the appellate side of that Court. The appeal was dismissed and an application for leave to appeal to the Privy Council, was made, which was refused by the High Court, on the ground of the petitioner's failure to establish the value of the matter in dispute, for the appeal, to be Rs. 10,000 or upwards. A petition, preferred

Practice.—(Continued).**2.—(Privy Council).—(Concluded).**

to the Privy Council thereon, for special leave to appeal, was granted, their Lordships holding that the value of the subject-matter of the suit must be taken to be the value for the purposes of the appeal, unless a different value has been determined for the latter as result of enquiry by Court or otherwise. **Ikramul Huq v. Wilde**, 33 C. 898 (P.C.)

LORD MAGNAUGHTEN, LORD DAVEY, LORD ATKINSON and SIR ARTHUR WILSON.

See, also, I, Act I of 1869 (Oudh Estates), No. 2; Civil Pro. Code, No. 314; Hindu Law (Impartible Estate), No. 3; Mortgage (Miscellaneous), No. 14.

3.—(Miscellaneous cases).

- (1) *Practice—Holding brief for another, legality of—Strict rule of law modified by old practice—Appeal argued by a pleader holding brief for another—Civil Procedure Code, Ss. 36, 37, 38 and 652—Oudh Civil Digest, Rule VIII.*

Held, that, although no formal rule regarding the transfer of a brief by one pleader to another had been made by the Court of the Judicial Commissioner, yet regard being had to the fact that the practice was one of a long standing in the Court and one formally authorized by the other High Courts, and also to the fact that it facilitated the work of the Court and tended to the convenience of the pleaders practising before the Court and of the parties as well, the practice was a proper one and should be maintained.

Held, further, that an appeal heard and argued by a pleader of Judicial Commissioner's Court to whom the brief had been so transferred, by another pleader was properly heard and decided and the party so represented should not be allowed to re-argue the appeal (a). **Prag alias Nanhu v. The Deputy Commissioner of Bahraich**, 9 O. C. 65.

WELLS, J. C.

References.—(a) 4 O.C. 303, 22 B. 654, 9 A. 618 and 2 Q. B.D. 43, B.

- (2) *Payment into Court of money due under a bond bearing interest—Appropriation of such payments first towards satisfaction of interest.*

It appears to be a well-settled practice of the Courts to appropriate payments made upon a bond first to the interest due thereon, and there-

Practice.—(Continued).**3.—(Miscellaneous cases).—(Contd.).**

after, if any balance remain, to the principal. **Maharaja of Benares v. Har Narain Singh**, A.W.N. (1905), 167 = 2 A.L.J. 585 = 28 A. 25.

STANLEY, C.J. and KNOX, J.

References.—1 B.L.R. 110 and 22 W.R. 525, *Itfd.* to.

- (3) *Evidence taken in a particular way—Jurisdiction of the Court.*

Parties, if so minded, may ordinarily agree that evidence shall be taken in a particular way, and it is common experience that parties do agree that evidence in one suit shall be treated as evidence in another. That is not a matter which can be said to affect the jurisdiction of the Court. It is merely that parties allow certain materials to be used as evidence which, apart from their consent, cannot be so used. **Ramaya v. Deivappa Ganpaya**, 7 Bom. L.R. 642 = 30 B. 109.

JENKINS, C.J. and AGTON, J.

- (4) *Application for letters of administration by agent under a power of attorney from an executor—necessity for affidavit of identity—Power to require further evidence as to identity.*

The practice of the High Court of Calcutta, for a long time, has been not to require an affidavit of identity, where an application for letters of administration is made by a person under a power-of-attorney, duly executed before and authenticated by, a Notary Public. But, if, in any particular case, the Judge is not satisfied with the identity of the executant of a power-of-attorney, it is open to him to call for further evidence. However, the judge ought not to dismiss the application on this ground. **Mylna, In the goods of**, 33 C. 625.

MACLEAN, C.J. and HARRINGTON, J.

- (5) *Motion for discharge of the guardians of an infant—Costs ordered to be paid out of estate—Disallowance of excessive Counsel's fees by taxing officer, whether correct.*

In a motion for the discharge of the guardians of an infant, the fee paid to counsel was found by the taxing officer to have been unusually excessive. The costs incurred by the guardians, in opposing the application, had been ordered by the Court to be taxed as between attorney and client and paid out of the estate. *Held*, the taxing officer had rightly decid-

Practice.—(Continued).**3.—(Miscellaneous cases).—(Contd.).**

ed that the said excessive fee paid to counsel was not *prima facie* allowable on taxation for payment, either out of the estate, or by clients, who were the guardian of the infant, because, unless the taxing officer was satisfied that the client clearly understood that the payment, either wholly or in part, would not be allowed out of the estate and that he would be personally responsible for the payment of the whole fee or for so much of it as was not allowed out of the estate, the excessive charge could not be regarded as authorized by the client and could not therefore be allowed as against him. *In the matter of, Thakur Dasse Dasse*, 33 C. 837.

SALE, J.

(6)—of allowing plaintiff in a suit for restitution of conjugal rights to value the relief sought in order to bring suit within jurisdiction of a Court not to be departed from—See ACT VII OF 1887 (SUITS VALUATION), No. 3, A.L.J. 266.

(7) Suits by and against tenant—Both suits decided against him—Appeal from one of the decisions—Appellant to be allowed to amend his memorandum of appeal so as to make it an appeal in both suits—See RES JUDICATA, No. 4, 16 M. L. J. 68.

(8) Suit against a firm—Practice under Rule 861 of the Bombay High Court—See LETTERS PATENT (BOMBAY), No. 1, 8 Bom. L.R. 56.

(9) Failure to pronounce judgment in open Court—Irregularity—See CIVIL PRO. CODE, No. 91, 8 Bom. L.R. 229.

(10) Decree upon a compromise for execution of a conveyance to be proceeded with as a decree for specific performance—See EXECUTION OF DECREES, No. 2, 10 C.W.N. 845.

(11) Discovery, Advocate-General not to be called upon to make, on oath—See CIV. PRO. CODE, No. 278, 8 Bom. L.R. 565.

(12)—of the Presidency Small Cause Court of Bombay as regards service of summons—See CIV. PRO. CODE, No. 69, 9 Bom. L.R. 581.

(13) English—and—of *moftusil* Courts in India in proceedings for revocation of probate or letters of administration.—See ACT V OF 1881 (PROBATE AND ADMINISTRATION), No. 9, 10 C.W.N. 955.

(14) Appeal by defendant against plaintiff and other defendants—Objections by plaintiff

Practice.—(Concluded).**3.—(Miscellaneous cases).—(Concl'd).**

respondent when ascertainable as against co-respondents—See CIVIL PROCEDURE CODE, No. 288, A.W.N. (1905), 200.

(15) Review of judgment, procedure on application for—See CIVIL PROCEDURE CODE, No. 337, 7 Bom. L.R. 664.

(16) Admission of appeal after the prescribed time—See LIMITATION ACT, No. 8, 7 Bom L.R. 965.

See, also, I, 757-760; ACT IV OF 1869 (Divorce) No. 2; Administration, No. 2; Appeal (Civil), No. 26; Civil Pro. Code, No. 281; Contract, No. 11; Evidence, No. 8; Execution of Decree, No. 81; Executor, No. 4; Guardian, No. 6; Insolvency Act (Vic. Ch. 49), No. 1; Legal Practitioners, No. 2; Limitation Act, No. 2; Oath, No. 1; Regulation II of 1837 (Bombay), No. 1; and Sale in Execution of Decree, No. 3.

Pre-emption.

(1) *Pre-emption*—Evidence of custom—Custom need not be immemorial.

In order that a custom of pre-emption may be held to be established, it is not necessary to show that the custom is immemorial, in the sense of the English Common Law. Hence where in a village which came into existence after 1846 there was found in 1869 evidence of a custom of pre-emption amongst the co-sharers, and further evidence of such a custom in 1885, it was held that the custom was sufficiently established for the Courts to give effect to it (a). *Lakhraj Bharthi v. Anrudh Tiwari*, A.W.N. (1906), 80 = 28 A. 434.

BAKERJI, J.

References.—(a) 17 A. 87, A.W.N. (1905), 266 and 28 B. 666, F'.

(2) *Wajib-al-ars, of 1864—Record of custom—Subsequent Wajib-al-ars—Right only recognised—Mohomedan Law, no application of.*

In the *wajib-al-ars* of 1864, it was provided that if a share-holder desired to transfer his share, "the right of pre-emption was possessed first by his near brother, secondly, by the sharers in the *patti*....&c." In the next settlement of 1894, a new *wajib-al-ars* was prepared in the following words:—"Custom as to pre-emption no case of pre-emption has yet taken place but the right of pre-emption is

Pre-emption.—(Continued).

acknowledged." *Held*, that the *wajib-ul-ars* of 1864 was a record of custom and the latter *wajib-ul-ars*, was a recognition by the parties of the custom prevailing under the earlier *wajib-ul-ars*, and that the Mahomedan Law did not therefore apply. *Daulat v. Mathura*, 3 A.L.J. 207 = 28 A. 556.

STANLEY, C.J. and BURKITT, J.

(5) *Wajib-ul-ars, interpretation of—Kimat—Usufructuary mortgage—Simple mortgage and lease.*

Where, in the entry regarding pre-emption in a *wajib-ul-ars*, the words *muntakil kars* (transfer) and *kimat* (price) were used, *held*, that a right of pre-mortgage would arise in the event of a co-sharer making a usufructuary mortgage of his share in favour of a stranger.

Having regard to the object which underlies the provisions as to pre-emption in a village administration paper, *viz.*, the prevention thereby of intrusion of strangers into the village community, the word *kimat* should be interpreted to include the consideration given for a usufructuary mortgage with possession as well as for a sale.

In this case, the plaintiff pre-emptor was allowed to prove by evidence *aliunde* that a deed of simple mortgage and a lease together represented a transaction of usufructuary mortgage. *Hulas Rai v. Ram Prasad*, 3 A.L.J. 215 = A.W.N. (1906), 82 = 28 A. 454.

KNOX and AIKMAN, JJ.

(4) *Wajib-ul-ars—Construction of document—Meaning of the term "ek jaddi."*

Held, that the term "*karibi ek jaddi*" used in the pre-emption clause of a *wajib-ul-ars* connotes descent through the male, and not through the female line. *Pemraj v. Umrao Singh*, A.W.N. (1906), 72 = 3 A.L.J. 179.

RICHARDS, J.

Reference.—23 A. 32, F.

(6) *Pre-emption—Wajib-ul-ars—Construction of document—Muhammadan Law—"Intiqal."*

Where in a *wajib-ul-ars* it was recorded merely that "the custom of pre-emption prevails," it was *held*, that, in the absence of any special custom different from, or not co-extensive with, the Muhammadan Law of pre-emption, the Muhammadan Law must be applied (a).

Pre-emption.—(Continued).

The term "*intiqal*" occurring in the pre-emptive clause of a *wajib-ul-ars* covers all kinds of transfers, mortgages as well as sales. *Jagdam-sahai v. Mahabir Prasad*, A.W.N. (1905), 190 = 2 A.L.J. 482 = 28 A. 00.

BANERJI and RICHARDS, JJ.

Reference.—(a) 9 A. 513, F.

(6) *Wajib-ul-ars—Co-sharer—Owner isolated plots of land in a village.*

Held, that the owner of isolated plots of land in a village is a co-sharer in the village and may, as such, possess rights of pre-emption, although he does not own a share in the Zemindari of the village and his name is not recorded in the *kherat*. *All Husain Khan v. Tasadduq Husain Khan*, A.W.N. (1906), 219 = 2 A.L.J. 612 = 28 A. 124.

BANERJI and RICHARDS, JJ.

References.—12 A. 496 and 10 A. 412, F.

(7) *Wajib-ul-ars—Construction of document.*

The pre-emptive clause of *wajib-ul-ars* was drawn up in the following terms:—"in case of great necessity, each co-sharer is entitled to transfer his property as recorded in the *kherat*, and the near co-sharers and the pattidars can claim a pre-emptive right; but out of them, the one who is nearer will have a prior right to do so."

Held, that the right of pre-emption only arose on a sale to a stranger. If the sale was to a co-sharer, no right of suit accrued to a nearer co-sharer. *Jai Dutt v. Ram Badal*, A.W.N. (1905), 227 = 28 A. 169.

STANLEY, C.J. and BURKITT, J.

(8) *Wajib-ul-ars—Pre-emptor accepting lease of property in suit from the vendee.*

Where, in a suit, for pre-emption based upon a custom declared in the *wajib-ul-ars* it was found that the pre-emptor had, with knowledge of his right as pre-emptor, accepted a lease of the land claimed from the vendee, it was *held*, that this amounted to such an acquiescence in the sale as would bar the plaintiff's right of suit. *Kishan Lal v. Ishri*, A.W.N. (1905), 260 = 28 A. 237.

BANERJI, J.

(9) *Wajib-ul-ars—Construction—Co-sharer in the village—Right to pre-empt.*

A *wajib-ul-ars* gave a right of pre-emption to own brothers and nephews, then to cousins

Pre-emption.—(Continued).

then to co-sharers in the *patti*, and then to co-sharers in the village. The village, which was originally divided into two *pattis*, was subsequently divided into several *mahals* by perfect partition, but no new *wajib-ul-arz* was framed. *Held*, that a co-sharer in one *mahal* had a right, to pre-empt in respect of a sale to a stranger of a share in another *mahal* (a). **Janki Nath v. Raja Ram Partab Singh**, 2 A.L.J. 893 = A.W.N. (1906), 2.

BANERJI and RICHARDS, JJ.

Reference.—(a) 22 A. 1, R.

(10) *Sale by Government—Co-sharer.*

When the Government acquires land permanently, it does not become a co-sharer in the village to which the land originally appertained, and the provisions contained in the *wajib-ul-arz* dealing with sales by co-sharers do not apply. Hence the Government can sell the land to any one it pleases and the co-sharers have no right of pre-emption. **Gaya Singh v. Raja Ram Singh**, 2 A.L.J. 787 = A.W.N. (1905), 259 = 28 A. 285.

KNOX and AIKMAN, JJ.

(11) *Purchaser of a grove—Sharer—Wajib-ul-arz.*

Purchaser of a grove not being liable to payment of Government revenue, is not a co-sharer in the village and is not entitled to pre-empt. **Muhammad Ali v. Than Singh**, 2 A.L.J. 788 = A.W.N. (1905), 264 = 28 A. 246.

KNOX and AIKMAN, JJ.

References.—2 A.L.J. 612, *Appl.* 16 A. 412, *Distd.*

(12) *Custom—Sayads of Bal Sayadan, Rawalpindi District—Relations of vendor—Prior right to pre-empt.*

Among the *Sayads* of Mauza Bal Sayadan in the Rawalpindi District, the first cousins of the vendor have, by custom, a right of pre-emption superior to that of a *Khatir* proprietor in the village. **Karam Shah v. Tara Shaw**, 87 P. R. 1905 = 43 P. L. R. 1906.

CHATTERJI, J.

Reference.—35 P. R. 1905, R.

(13) *Wajib-ul-arz, ambiguity of—Construction—Contract—registration—termination of settlement.*

A contract of pre-emption recorded in a *wajib-ul-arz* does not require registration. In the

Pre-emption.—(Continued).

absence of evidence to the contrary, such a contract will be held to last only as long as the settlement during which it is made, continues.

Where the language of a *wajib-ul-arz* is obscure, it affords no basis for a right of pre-emption. **Makhdum Baksh v. Ali Hussain Khan**, 3 A.L.J. 907 = A.W.N. (1906), 149.

KNOX and AIKMAN, JJ.

(14) *Proposal to sell—Oudh Laws Act, Ss. 10 and 11.*

A mere proposal to sell property does not entitle any one to claim pre-emption: but under the Oudh Laws Act there must be a complete contract for sale before a suit for pre-emption can be maintained. **Shankar Parshad v. Hamid Ali Khan**, 9 O. C. 169 (B.)

CHAMIER and WELLS, J.CS.

References.—S.C.A. No. 247 of 1904, 9 O.C. 219, 2 O.C. 7, R.

(15) *Wajib-ul-arz—custom of pre-emption—Specification in the first wajib-ul-arz—custom mentioned in the second wajib-ul-arz without specification—Muhammadan Law.*

Where the *wajib-ul-arz* of 1864 gave a right of pre-emption to near brethren &c., and at the settlement of 1888 the *wajib-ul-arz* prepared only mentioned that the custom of pre-emption was accepted;

held, that the custom referred to was a custom as recorded in the *wajib-ul-arz* of 1864 and not a custom under the Muhammadan Law. **Pokhar Singh v. Muhammad Hussain Khan**, 3 A.L.J. 451 = A.W.N. (1906), 205 = 28 A. 679.

STANLEY, C.J. and KNOX, J.

(16) *Chaks not constituting villages, presumption as to the existence of right of pre-emption upon sales of land in—The term village in Punjab Laws Act, meaning of—*

The presumption under S. 10, Punjab Laws Act, in favour of the existence of a right of pre-emption upon sales of land in a *chak* cannot arise unless the *chak* constitutes a 'village' and the persons living in it and owning property in it can be called a 'village community.' A village or village community, under the above Act, cannot of course be restricted to mean only a village of one of the well-defined types *e.g.*, zamindari, pattidari, bhaya-chara, etc., but this does not imply that, when the Government demarcates an area with the in-

Pre-emption.—(Continued).

tention of perhaps some day making it a village, that area becomes a village immediately Government begins to allot lands in it. When Government finally settles it and draws up a separate record-of-rights for it, assessing the *chak* as an 'estate' to land revenue, it may become a village community; till then the *chak* is not a village nor is there any village community and there can be no presumption, therefore, in favour of the existence of the right of pre-emption in the area. **Ram Narain Singh v. Sewak Ram**, 21 P.R. 1906.

JOHNSTONE and LAL CHAND, JJ.

References.—27 P.R. 1897, 66 P.R. 1903, 80 C. 635, R.

- (17) *Sale by occupancy tenant of his mill on the site, right of pre-emption in favour of proprietor on—*

The claim in this case was for possession by pre-emption of a watermill, on the sale of the same by its owner, who was an occupancy tenant on the site belonging to the claimant, a proprietor in the village. The vendee pleaded *inter alia* that the sale was of occupancy rights and there was no custom of pre-emption in regard to such rights and that, in any case, plaintiff's rights were not superior to his. The first Court held that the vendors had a transferable interest in the land, that both by law and by local custom, rights of pre-emption do arise in connection with the sales of mills (*jandars*) and of the occupancy rights, which the vendors enjoyed in the sites of the same, and that plaintiff was and the vendee was not a proprietor in the village and, therefore, plaintiff's right to purchase is the better one. The lower appellate Court, however, dismissed the suit, accepting the appeal, holding that the property sold were the *jandars* and not the sites of the same and that no local custom has been proved to exist under which a right of pre-emption arises in connection with the sales of *jandars*. *Held*, reversing the decision of the lower appellate Court, upon the sale of the mill in question by its owner, a right of pre-emption must be presumed to arise, because the sale of the structure of the mill cannot be separated from the sale of the occupancy rights in the site.

As regards the price to be paid, *held*, further, that where the market-value of the property sold is conspicuously below the price stated in the sale-deed and a large part of the consideration consists of old debts due to the vendee, the

Pre-emption.—(Continued).

amount of the old debts cannot be taken to be the real value of that part of the consideration, such debts having to be valued as claims not as cash. **Haider v. Ishwak Das**, 22 P.R. 1906 = 115 P.L.R. 1906.

JOHNSTONE and RATTIGAN, JJ.

References.—75 P.R. 1901, 77 P.R. 1901, R. and 68 P.R. 1902, D.

- (18) *Two successive purchases by same vendee—claim to be co-sharer, at date of suit on first purchase in virtue of second purchase.*

Where, in a suit for pre-emption, it appeared that the vendee had, prior to the date of the suit, made a second purchase in regard to which no suit had been filed prior to the date of the institution of the suit in regard to the first purchase, but limitation had not expired in regard to the second purchase; *held*, that the vendee could not be considered, by virtue of his second purchase, to have been a co-sharer at the date of the institution of the suit on the first purchase. **Kaleshar Rai v. Nabihah Bibi**, A.W.N. (1906), 164 = 8 A.L.J. 246 = 28 A. 642.

RICHARDS, J.

Reference.—25 A. 421, D.

- (19) *Custom—Contract—Fresh settlement.*

Held, that, if a right of pre-emption was based on contract, it would cease, unless specially renewed, at a fresh settlement, but if based on custom, the burden of proof would be on the defendants to show that a custom proved to have once existed had come to an end. Mere purchase by strangers once or twice unopposed was insufficient. **Birjanandan Lal v. Musamat Kunwarl**, A.W.N. (1906), 174 = 8 A.L.J. 561.

RICHARDS, J.

Reference.—A.W.N. (1904), 128, R.

- (20) *Transfer of Land for natural love and affection and for past services constitutes sale giving rise to the right of pre-emption.*

A transfer of immovable property, where the transferor was the maternal uncle of the transferee and the consideration was found to be natural love and affection, past services, payment of part of a debt due by the transferor and a promise to pay the balance; was *held* to be a sale within S. 9 of the Punjab Laws Act so as to give rise to the right of pre-emption. The fact that part of the consideration was money paid and to be paid by the transferee for the use of the transferor, and the addition of past

Pre-emption.—(Continued).

services and natural love and affection affects merely the question of the price at which the pre-emptor is to take. *Ali Baksh v. Sobha Singh*, 28 P.B. 1906=107 P.L.R. 1906.

REID, J.

References.—54 P. R. 1889, 188 P.R. 1890, 2-P.R. 1908, 11 A. 1 and 28 M. 70, R.

(81) *Sale-deed—value as evidence—fancy price paid—pre-emption on payment of that price.*

Where, in a pre-emption suit, the pre-emptor pleads that the price of property in suit is less than what the sale-deed describes, the sale-deed should be looked upon as the ultimate agreement come to between the parties as showing the receipt of consideration and as being the evidence by which the rights of parties ought to be determined, unless the evidence afforded by it has been rebutted by other evidence to the effect that the consideration mentioned in the deed had not been paid and received.

It is an elementary fact in pre-emption law that if a vendee is willing to pay even a fancy price many times its value, for certain property and does pay it, the pre-emptor, who wants to take over that property, can do so only on payment of that fancy price.

Rs. 85,000 was the aggregate price of 10 villages agreed to be sold, but the parties to the sale transaction agreed that a separate conveyance should be executed in respect of each of the villages showing the consideration to be paid for each village, *held*, that there was nothing to prevent a vendor and purchaser from modifying a contract entered into between them in any way they pleased or of rescinding a contract and entering into an entirely new contract. *Held*, also, that the parties had an absolute right to arrange that the sale should be carried out by separate conveyances and to fix the price of each village at their pleasure. If the prices were fixed, as far as possible, to prevent pre-emption, there was no objection to this, provided the purchase-money, as set forth in each conveyance, was in each case actually paid.

In this case, the pre-emptor was held liable to pay interest at the rate of 6 per cent *per annum* on the sale price mentioned in the sale-deed for the period intervening between the date of his declining to purchase it at that price

Pre-emption.—(Continued).

and the date of actual payment under the decree. *B. E. O'Conor v. Ghulam Haidar*, 3 A.L.J. 365=A.W.N. (1906), 155=28 A. 617,

STANLEY, C.J. and BUCKNELL, J.

(22) *Wajib-ul-ars—Price—power given by wajib-ul-ars to appoint arbitrator to settle price—wajib-ul-ars unenforceable.*

Where the terms of the *wajib-ul-ars* were that, when there was a dispute with respect to the price of a property, the matter should be referred to arbitration and, if the parties, did not refer it, the Collector should have power to appoint an arbitrator; *held*, that the clause was incapable of enforcement and the *wajib-ul-ars* did not enable a Court to fix a substitute for the contract entered into between the vendor and the vendee a different contract with regard to the consideration for the sale. *Mehi Lal v. Chet Ram*, 3 A.L.J. 479.

STANLEY, C.J. and BAKERJI, J.

(23)—*between Hindus in Benares city—modification of Mahomedan Law to be applied—performance of preliminaries necessary—meaning and not style of the statement making a claim for pre-emption to be considered.*

In a suit for pre-emption between Hindus, in the absence of any allegation or proof as to any custom different from or not co-extensive with the Mahomedan Law, that law must be applied to the case, and the performance of the preliminaries required by that law, as conditions precedent to the perfection of that right, must be performed. According to the *Hedaya* it is the meaning and not the style of the statement making the claim that is to be considered.

Held, therefore, that a claim couched in the words: "I have a claim for pre-emption on this house. If any one else purchase it, I shall be put to inconvenience. Go at this very moment and take the money from *Shoshi Bhushan Sircar* and tell *Ram Charan* and *Chakauri Devi* to return the house by taking the money," clearly evinced a desire on the part of the pre-emptor to claim the right. Where the words used are a mere statement of the fact that the speaker had a claim for pre-emption, the requirements of the Mahomedan Law would not be satisfied. *Chakauri Devi v. Sundari Devi*, 3 A.L.J. 388=A.W.N. (1906), 144=28 A. 590.

KNOX, J.

(24)—*Vendee declaring sale fictitious—Decree by first Court declaring right of pre-emption—Right of appeal—Sufficient interest.*

Pre-emption.—(Continued).

W obtains from the Court of first instance a decree declaring his right to pre-empt in regard to a sale-deed, by which S purported to transfer lands and houses to his wife, N, in lieu of part of her dower. N's defence was that she and her husband were on bad terms and that the sale-deed was fictitious and intended to defraud her of her dower. N appealed and the lower appellate Court allowed the appeal, holding that the sale was fictitious. *Held*, that N had an interest entitling her to appeal. *Wasluzkaman v. Nasirun Nabi*, A.W.N. (1906), 160=3 A.L.J. 643.

AIKMAN, J.

Reference.—6 N.W.P.H.R. 412, D.*

(25) *Construction of wajib-ul-arz—Retention of same wajib-ul-arz after division of village into mahals—Hissedaran deh Hissedaran patti, on the same footing.*

Where a village was divided into three *mahals* and the new *wajib-ul-arz* which was prepared for one of them, A.M., was copied *verbatim* from the *wajib-ul-arz* of the village before division and clearly put *hissedaran deh* and *hissedaran patti* on the same footing, *held*, that a co-sharer in the *mahal* A.M., had no right of pre-emption in regard to property sold in A.M., as against a co-sharer who, though he had no share in the *mahal* A.M., was a co-sharer in one of the other *mahals*. *Sardar Singh v. Ijas Hussain Khan*, A.W.N. (1906), 184=28 A. 614.

STANLEY, C.J. and KNOX, J.

Reference.—22 A. 1 (F.B.), D.

(26) *Acquisition of footing in a village by vendee by acceptance of gift of shamalat—Gift, whether incomplete without delivery of possession.*

Suit for pre-emption. The defendant-vendee pleaded that he had acquired a footing in the village by virtue of a gift of a share in a *shamalat* from a proprietor and as such his rights were equal to those of the plaintiff-pro-emptor. The latter maintained that the gift was a trick to defeat the pre-emptor and that the same was invalid for want of delivery of possession. *Held*, (1) that the gift relied on by defendant gave him rights equal to those of the plaintiff; and that there was nothing illegal or fraudulent in the defendant's having accepted a gift, even if such acceptance was with the avowed object of obtaining a footing in the village and (2) that the gift was valid, even without delivery of pos-

Pre-emption.—(Continued).

session, because the donor had done, all he could to complete the gift and had supported the donee, because the subject-matter of the gift in this particular case was incapable of physical possession and also because the question of the incompleteness of the gift was one that cropped up not between the donor and the donee but between the latter and a third person (a). *Paratab Singh v. Fatta*, 45 P.R. 1906=120 P.L.R. 1906.

JOHNSHORE and RATTIGAN, JJ.

References.—(a) 45 P.R. 1901, D., 21 P.L.R. 1901, 28 B. 81 and 11 C. 121 (F. C.), F.

(27) *Appeal by purchaser from a decree for pre-emption—Lower Court's decree confirmed on appeal—Time for payment of purchase-money, whether appellate Court bound to fix—Omission to fix such time in appellate decree, effect of—*

In deciding an appeal by a purchaser from a decree for pre-emption and dismissing the appeal in confirmation, of the lower Court's decree, it is not obligatory on the appellate Court to fix a period subsequent to the date of its decree within which the price fixed by the Court below is to be paid.

It is settled by the weight of authority that when a decree has been confirmed, reversed or modified by the Court of appeal, it is the appellate decree that is the subsisting decree capable of execution. Where the appellate decree confirming the original decree for pre-emption does not fix any period of time for the payment of the pre-emptive money, the true meaning of the appellate decree is that the terms of the decree confirmed thereby are approved and maintained intact, and among them the provision in the original fixing the date or time for payment of the pre-emptive money.

When a decree is under appeal, the matter disposed of by it is re-opened and it remains in abeyance, but the confirmation of such decree in appeal restores its provisions just as they stood when it was passed. To hold, therefore, in case like the present that the time for payment fixed by the lower Court is to be attached to the decree passed on appeal confirming the decree of the lower Court involves a contradiction in terms the confirmation of the decree really resulting in the alteration of it and especially where the appeal has been dismissed under S. 551, Civ. Pro. Code, the result of

Pre-emption.—(Continued).

such action would be that without hearing or even giving notice to the respondent the appellant would have his case altered in his favour to the prejudice of the respondent, a result entirely opposed to the provisions of the Civ. Pro. Code and to the dictates of natural justice. So where no fresh period is fixed for payment by the appellate decree, the time fixed by the lower Court stands, and where such time is a period, no fresh period is to be taken as given by the appellate Court and such time must be calculated from the date of the original, and not that of the appellate decree. From the simple proposition that, in the case of appeals, the appellate court's decree is the only one that subsists, it does not in any way follow that fresh time equal to that fixed in the first decree must necessarily be allowed to the pre-emptor from the date of the appellate decree dismissing his appeal. Where the appellate Court itself fixes fresh time, however short, no difficulty arises and in such a case, the original decree is not confirmed but varied *pro tanto*. **Wasawa Singh v. Lal Singh**, 48 P.R. 1906 (F.B.) = 104 P.L.R. 1906.

CLARK, C.J., and REID and CHATTERJI, JJ.

References.—88 P.R. 1898, *overruled*, 11 A. 340, *Diss.* 67 P.R. 1895, 18 A. 223, 18 A. 455, *F.*

10 P.R. 1895, 11 A. 267, 11 B. 172, 13 C. 13, 22 C. 467, 15 M. 170, *R.*

(28) *Punjab Laws Act, 1872, S. 12 (b)*—*Meaning of expression 'order of relationship', as referring to order of succession under customary law.*

In this case, the question was referred to the Full Bench, whether the expression 'in the order of relationship' in S. 12 (b) of the Punjab Laws Act, should be interpreted literally or with reference to the meaning, it should bear in cases of succession to landed property, under the customary law of the Punjab; that is to say, whether the expression should be held equivalent to 'in the order of succession' and to connote recognition of the right of representation in calculation of relationship in cases of pre-emption and it was held, agreeing entirely with the judgment of the Division Bench, that the words really mean "in the order of succession" as heir. Such interpretation alone would accord with the law as it has prevailed among the agricultural population of the Punjab. In construing the expression 'in

Pre-emption.—(Continued).

the order of relationship' used in the above Act applicable to the Punjab, it must be borne in mind that, their degrees of propinquity to the same common ancestor, are regarded as of no moment and it is therefore no twisting of the meaning of the language to treat 'relationship' as not synonymous with 'propinquity', and 'order' with 'degree'. On the other hand, if the other and literal interpretation be adopted, it would result in the introducing of females (the wording not being 'agnatic relationship'), destroying the whole fabric of customary law relating to land-holding among agriculturists in Punjab and doing away with the very foundations of the law of pre-emption. **Karim Bakhsh v. Jehanad Khan**, 74 P.R. 1906 = 137 P.L.R. 1906.

CLARK, C.J., CHATTERJI and JHONSTONE, JJ.

References.—52 P.R. 1896 and 98 P.R. 1894, *R.* 65 P.R. 1878 & 117 P.R. 1882, *overruled*, 27 P.R. 1893, *D.*

(20) *Punjab Pre-emption Act II of 1905—Conditional sales of land under deeds of Baibil wafa, whether subject to pre-emption in case of agricultural lands.*

The Punjab Pre-emption Act makes a distinction between mortgages by conditional sale of agricultural land and of other immovable property, so far as regards their being subject to the exercise of the right of pre-emption. S. 4 of the Act limits the right of pre-emption to sales, in the case of agricultural land, and makes foreclosures also subject to pre-emption in the case of other properties. Conditional sales under deeds of *Baibil wafas* executed before Punjab Act II of 1905, relating to agricultural lands could not therefore be properly subject to pre-emption, it being necessary for the mortgagee in such cases to apply for foreclosure. **Ram Parshad v. Hira**, 87 P.R. 1906.

REID, J.

(30) *Sale of equity of redemption in favour of mortgagee—Extinguishment of mortgage—Right of pre-emption is right of complete substitution.*

In the absence of any intention to keep the mortgage security alive, the sale of equity of redemption to the mortgagee extinguishes the mortgage, and the person having right to claim property by right of pre-emption, on a sale of the property, is entitled to recover its possession on the sale of equity of redemption to the

Pre-emption.—(Continued).

mortgagee, when the intention to keep the mortgage-security alive is negatived.

A right of pre-emption is not merely a right of re-purchase, but a right of complete substitution in the place of the vendee.

A pre-emptor, by reason of pre-emptive right, is entitled not merely to have the sale transferred to him, but also to be vested with all benefits which legally flow from the sale. **Ahmad Shah v. Walidad Khan**, 88 P.L.R. 1906=98 P.R. 1906.

RATTIGAN and LAL CHAND, JJ.

- (31) *Wajib-ul-arz—construction—transfer of muafi and Khalsa.*

The *wajib-ul-arz* of a village provided that, when a share in the *Khalsa* land is sold, the co-sharers in a certain order will have a right of pre-emption and when *muafi* is sold to a stranger "the right of pre-emption shall arise as regards that transfer." In a suit for pre-emption of a *muafi* share, *held*, that the condition as to pre-emption in respect of the revenue-paying land governed the *muafi* land also, save that the co-sharers in general had a right to pre-empt the *muafi* land, whereas in the case of *Khalsa* land, there was a gradation among the co-sharers. **Rang Lal v. Kamta Prasad**, 3 A.L.J. 515=A.W.N. (1906), 247.

AIKMAN, J.

- (32) *Hinda Law—joint family—Right of pre-emption—other members co-sharers for purposes of pre-emption—wajib-ul-arz.*

Members of a joint Hindu family, other than the member who is recorded in the Collector's books as a sharer in the *mahal*, are co-sharers for the purposes of the pre-emption, within the meaning of the *wajib-ul-arz* (a).

The *wajib-ul-arz* of a village provided: "when a share of any *lambardar* is to be sold or mortgaged, then the members of his family can first claim pre-emption, and in case of their refusal, other co-sharers may do so."

Held that, where a vendor who was also the *lambardar*, lived jointly with his son, the latter could claim pre-emption in view of the terms of the *wajib-ul-arz*. **Raghu Nath v. Mussammat Rahat Begam**, 3 A.L.J. 641=A.W.N. (1906), 240.

STANLEY, C.J. and KNOX, J.

Reference.—(a) 7 A. 181, R.

Pre-emption.—(Continued).

- (33) *Wajib-ul-arz recording custom of—previous one giving no such right—the latest silent—The right never claimed in respect of other sales—custom fallen into desuetude.*

Where the *wajib-ul-arz* of a village prepared respectively, in 1860 and 1871 afforded evidence of the existence of a custom of pre-emption, but that of 1896 proved that no such custom existed and the latest *wajib-ul-arz* was silent as to such custom, there also being evidence of sales taking place in the village, without the right being ever claimed, *held*, that the lower Court was justified in holding that the custom had not been satisfactorily proved. **Gulab Singh v. Jag Ram**, 3 A.L.J. 646=A.W.N. (1906), 249.

STANLEY, C.J. and KNOX, J.

- (34) *Wajib-ul-arz—Clause, incapable of enforcement.*

A *wajib-ul-arz* contained the following clause:—

"If a co-sharer, being in collusion and concert with a stranger..... gets an improper and unreasonable price settled for the property through animosity or with the intention of causing disturbance in the village, and if there be a dispute as regards the price, the price shall be settled by an arbitrator, who shall be nominated by mutual consent. If none of the parties be willing to refer the matter to arbitration, the Collector shall have power to appoint an arbitrator on behalf of the Government and to have the price settled."

Held, that the clause in question could not be enforced. The Collector has no power on behalf of Government to appoint an arbitrator and the Court is not entitled to vary the contract entered into between the vendor and vendee. It cannot fix "a reasonable price" or, indeed, any price other than that actually paid. **Chaudhari Mehl Lal Singh v. Lakhpat Singh**, A.W.N. (1906), 218.

STANLEY, C.J. and BANERJI, J.

- (35) *Decree—Mortgage—Costs—Set off.*

A judgment, dated the 24th September, 1904, in favour of the pre-emptor under a foreclosure decree directed payment within two months of Rs. 2,100, together with the costs, if any, incurred by the purchaser in obtaining the order absolute. The corresponding decree contained the words "together with the costs of the purchaser in the foreclosure case, if any". The decree also awarded the plaintiffs a sum of Rs. 117-4-0, as costs.

Pre-emption.—(Continued).

The Rs. 2,100, was paid within the time fixed.

On the 24th February, 1905, the judgment-debtors claimed that they were entitled to be restored to possession and that the suit must be deemed to have been dismissed, inasmuch as the costs, amounting to Rs. 25-12-0, of the proceedings relative to the order absolute had not been deposited.

Held, that the Rs. 117-4-0, could be set off against the Rs. 25-12-0: that the Rs. 2,100 deposited was therefore in excess of the actual sum payable under the decree and that the judgment-debtors' claim failed. **Permanand Rao v. Gobardan Sahai**, A.W.N. (1906), 198 = 8 A.L.J. 804 = 28 A. 676.

BANERJI and AIKMAN, JJ.

Reference.—18 A. 228, R.

(36) *First demand—Talab-i-mawasibit—Power of general attorney to make first demand—Pleadings—Proof that person is general attorney—Practice.*

Where the plaintiff in a pre-emption suit alleged that the first demand or *talab-i-mawasibat* was made for him by his general attorney and the defendant did not deny that the person in question was the general attorney of the plaintiff, but in fact no *mukhtarnama* or copy of it was filed, the original being filed in another appeal then pending before the lower Appellate Court:

Held that, looking to the pleadings, the lower appellate Court, if it had any doubt on the point, should either have examined the other record or at least have given the plaintiff an opportunity of filing the *mukhtarnama* or a copy.

Held, further, that the first demand or *talab-i-mawasibat* can be made by a general attorney. **Munna Khan v. Gheda Singh**, A.W.N. (1906), 177 = 8 A.L.J. 798 = 28 A. 691.

AIKMAN, J.

References.—1 A. 521, 7 A. 41, F., W.R. (1864), 219, R.

(37) *Wajib-ul-arz, construction of—Right of pre-emption, conferred on share-holders in the village or its patti.*

Where, long after the division of a village into *pattis*, the right of pre-emption was conferred by the subsequent *wajib-ul-arz* upon the share-holders of the village and also upon those

Pre-emption.—(Continued).

In each of its *pattis*, the *wajib-ul-arz* must be interpreted to mean that a person, who does not own a share in the particular *patti* or *mahal*, in which the property sold is situate, but, happens to be a share-holder in the village to which the *patti* belongs, is entitled to claim pre-emption as against an outsider. In other words, every co-sharer in the village is necessarily to be held entitled to pre-empt, though he does not happen to be a sharer in the particular *patti* in question. **Janki v. Ram Partab Singh**, 28 A. 286.

BANERJI and RICHARDS, JJ.

Reference.—22 A. 1, R.

(38) *Sale by joint owner of his share—Subsequent "Mortgage" of the remaining property by the other joint owner—Mortgage really a sale—Whether latter joint owner has right to pre-emption.*

Where two persons were equal joint owners of a certain property, and one of them sold his share and, subsequently, the other alienated his share, under a transaction, which was alleged to be a mortgage, but was in reality a sale, and there were no circumstances contemplating redemption, the latter joint owner cannot afterwards sue the former for pre-emption, as the plaintiff (latter) is no longer a co-sharer at the date of suit. **Anwar Hasan v. Umatul Karim**, 145 P.R. 1906.

JOHNSTONE, J.

References.—100 P.R. 1805, 78 P.R. 1904, D.

(39) *Sale to a stranger with the concurrence of a co-sharer—purchase by the co-sharer concurring—revesting—suit for pre-emption maintainability of.*

The object of pre-emption is to keep strangers out of the co-parcenary body of a village, and to maintain the unity of the co-parcenary body. If, before pre-emption proceedings are instituted, the property has found its way into the hands of co-sharers, there is no reason for allowing pre-emption, which is, by the way, a very weak right.

Where certain property was sold to a stranger, with the concurrence of two of the co-sharers, but, before the suit for pre-emption was instituted, they again purchased it, *held* that the suit could not be maintained. The fact, that the co-sharer concurring could not maintain a suit for pre-emption, does not preclude him from purchasing and setting up a

Pre-emption.—(Continued).

revesting of the property in himself. *Lahat Hussain v. Rashid-ul-Din*, 8 A.L.J. 784, A.W.N. (1906), 313.

STANLEY, C.J. and RUSSELL, J.

Reference:—35 A. 421, R.

(40) Wajib-ul-urz—Construction—Contract or custom.

Where the recital in a *wajib-ul-urz* does not clearly show that it is a record of a contract, it must be held to be record of custom (a). Where a *wajib-ul-urz* provided that co-sharers wished to "record the matters entered below and that they will remain bound by it," and in matters of transfer it provided that, at the time of transfer, "it shall be necessary (*larim hoga*)" for a co-sharer to transfer to his co-sharers, held that the recital was not a record of contract and that the words *larim hoga* did not make it a record of contract.

It is always dangerous to construe one *wajib-ul-urz* by another. *Baldeo Sahai v. Nagai Ahir*, 3 A.L.J. 850.

ARMAN, J.

Reference:—(a) A.W.N. (1897), 3, F.

(41) Wajib-ul-urz—Construction of document—Custom or contract.

The *Wajib-ul-urz*, bearing date 1872, of a village, in respect of the sale of land in which a claim for pre-emption was made, contained, under the heading "Rights amongst co-sharers based on custom or special agreement," the following provision as to the price to be paid by pre-emptors:—"If there be a difference between a seller and a pre-emptor as regards the amount of price, it shall be settled as follows:—In case of sale, Re. 1 *per kachha bigha* of the culturable land, and in case of mortgage, annas eight *per kachha bigha* of the culturable land." This provision did not re-appear in the existing settlement.

Held that the provision above set forth indicated the existence of a contract between the co-sharers, and not of a custom. *Jagan Nath Singh v. Lular Kunwar*, A. W. N. (1906), 308.

STANLEY, C.J. and BURKITT, J.

Reference:—8 A. 103, R.

(42) Resale by vendee to vendor, when could affect right of pre-emptor—Sale to stranger of a co-occupant's entire share, effect of.

In cases to which the Muhammadan law of pre-emption is applicable, it has been held, on

Pre-emption.—(Continued).

the authority of the *Hedaya*, that, once the right of pre-emption had accrued, no subsequent dissolution of the contract, between the parties to it, could disolve such right (a).

Further, apart from the Muhammadan Law, the power to defeat the rights of the pre-emptor lasts only up to the institution of the pre-emption suit and *a fortiori* does not last after the passing of the decree in the suit. So, on the passing of such a decree, the right under it cannot be defeated by any subsequent resale by vendee to vendor. Also, even before the institution of the suit, it would appear that a stranger-vendee of a co-occupant's entire share cannot defeat the pre-emptor's right by reconveying the share to the vendor. *Ganpatra Mahadass v. Joomabhai*, 2 N.L.R. 150.

BATTER, A.J.C.

References:—(a) 13 W.R. 332, R. 20 A. 100, 21 A. 374, 21 A. 441, 23 A. 247, 26 A. 389, A.W.N. (1894), 160, R.

(43) Jurisdiction of sale officer to sell in contravention of the orders passed by the Court executing the decree—Invalid sale in execution of decree—Sale in spite of the order staying the sale, effect of, on right of co-sharer to claim pre-emption.

The plaintiff claimed pre-emption on the ground that he was a co-sharer in the *mahal*, in which the share sold was situate. The defence was that the whole share of the plaintiff having been previously sold up, in execution of a decree against him, he was not a co-sharer and as such entitled to pre-empt.

It was found that the officer conducting the sale had wrongly sold up the entire share of the plaintiff, in ignorance of an order, of the Court executing the decree, staying the sale of the whole share and directing only a portion thereof to be sold.

Held, that the sale of the entire share was invalid, the officer conducting the sale having no jurisdiction to sell in contravention of the order of the Court executing the decree and, therefore, the plaintiff was still a co-sharer in the *mahal* and, as such, entitled to claim pre-emption (a). *Ratan Singh v. Dular Singh*, 9 O.C. 289.

CHAMBER and EVANS, J.CS.

References:—(a) 12 A. 96, F., 21 A. 140 and 21 C. 66 (P.C.), R.

Pre-emption.—(Continued).

(44) *Admission of vendor in sale-deed and written statement as to part-payment of price by vendee—Decision of question as to payment of price between vendor and vendee in a suit by pre-emptor.*

Held, that, in a suit for pre-emption, where there is a dispute between the vendor and the vendees, the defendants in the case, as to the amount to be paid by the plaintiff and as to the terms on which he is entitled to a decree and the Court decides the amount to be paid by him and how much out of it to each of the defendants, it is as much a decision between the defendants as between the plaintiff and the defendants and is thenceforth binding on both the defendants. **Raja Rampal Singh v. Musammat Hafiza**, 9 O.C. 308.

CHAMIER, J.C.

Reference:—8 O.C. 288, R.

(45) *Property sold not in actual possession of vendors—Law suit, sale of a share in a—Sale for purposes of litigation—Oudh Laws Act (XVIII of 1876), Chapter II.*

By a sale-deed, the vendors purported to sell to the vendees a right to prosecute a law suit on their behalf in order to recover actual possession of the share inherited by them from their mother. A portion of the consideration money was paid in cash but the greater portion was left with the vendees to carry on litigation in different Courts between the vendors and one J who was in actual possession of the property.

Held, that this being the case of a sale of property not in actual possession of the vendors, it was not such a sale of immovable property which could be the subject of pre-emption as contemplated in Chapter II of the Oudh Laws Act (a). **Khurshid Ali v. Rashid Husain**, 9 O. C. 331.

CHAMIER and EVANS, J.C.S.

References:—(a) 21 C. 496, 2 O.C. 9 and 9 O. C. 86, R.

(46) *Right of, by reason of vicinage, with respect to mercantile property.*

The point to be determined in this case was whether the custom of pre-emption obtained with respect to the property in question, which was essentially a block of shops or mercantile property on the whole. *Held*, it is a well-recognised rule that, in the absence of a special custom to the contrary, pre-emption does not

Pre-emption.—(Continued).

extend to shops (a); and, the plaintiff, in this case, not having proved any special custom, the property in question, which was mercantile property on the whole, must be held to be not subject to pre-emption. The fact that some portion of the property consisted of residential quarters could not make any difference in the mercantile nature of it as a whole. **Bagwan v. Har Prasad**, 111 P.R. 1906.

KENSINGTON and CHITTY, JJ.

References:—(a) 17 P.R. 1895 and 58 P.R. 1900, F. 64 P.R. 1887, 103 P.R. 1895 and 2 P.R. 1903, R.

(47) *Right of, in regard to kothris attached to shops, obtaining in Katra Nihal Singh, Amritsar.*

Suit to pre-empt, by right of vicinage, certain kothris attached to shops in the Amritsar city. The chief content turned on whether the premises were in Katra Nihal Singh or not and as to that; the plaintiff's allegation that the property lay in Katra Nihal Singh was found correct. On the findings in various prior decisions and on the un rebutted evidence let in by the plaintiffs, it was held that a custom of pre-emption in regard to shops obtained, on the score of vicinage, in Bazar Papran, Katra Nihal Singh, where the shop's property in dispute lay. **Attar Singh v. Sant Singh**, 113 P.R. 1906.

JOHNSTONE and HURRY, JJ.

Reference:—58 P.R. 1900, R.

(48)—*by right of vicinage, in respect of house property, whether obtains in Delhi—Pre-emption Act, 1905, S.6.*

The question really in issue between the parties to this suit was whether or not a custom to pre-empt by right of vicinage prevailed in Kucha Aqual Khan, Delhi, where the house in question was situate. *Held*, the plaintiff having succeeded in proving that the custom obtains generally in Delhi, he was entitled to claim that he has shown it to exist in the particular locality within Delhi, and, also, on a review of authorities and precedents, it was clear that such a custom obtained very generally in the City of Delhi, a Muhammadan City of Muhammadan origin. *Held*, further, that, for proving the existence of a custom of pre-emption within any specified area forming a sub-division, within the meaning of S. 6 of the pre-emption Act of 1905, instances of its exercise within that area must be produced,

Pre-emption.—(Continued).

but instances in other neighbouring sub-divisions, and in the city including the area are relevant and useful to strengthen the evidence of the existence of such customs. **Abdulla Beg v. Walatti Begam**, 120 P. R. 1906.

REID, C.J. & ROBERTSON, J.

References:—81 P.R. 1906, 64 P.R. 1887, 17 P.R. 1903, 108 P.R. 1895, R. 68 P.R. 1879, 21 P.R. 1900, D.

(49) *Properties used as residence, used for business also—Use for business purposes not to alter the character of the property.*

A suit for possession by pre-emption, of certain premises, in Delhi. The principle use to which the premises were put happened to be that of residence and it was held that, though business may be the object of such residence, the properties could not for that reason be deemed to have lost their character as residential properties and to have become mercantile property, entirely, for the purposes of pre-emption. *Held*, further, that, even if the property were shop property, properly so called, it could not be contended successfully that the right to pre-empt is not exercisable in the case of sales of shops at Delhi (a). **Nawal Keshore v. Amir Khan**, 122 P.R. 1906.

KENSINGTON & CHITTY, JJ.

Reference:—(a) 81 P.R. 1906, R.

(50) *Mortgage of property sold—Receipt of mortgage money by pre-emptor from vendee without protest—waiver of right of pre-emption.*

Where property claimed by the plaintiff by right of pre-emption was mortgaged with him, and the plaintiff, without protest, accepted the mortgage money from the vendee,

held, that the plaintiff must be deemed to have waived his right to pre-empt. **Mehta Chandras v. Malik Itbar Khan**, 154 P.L.R. 1906.

BATTIGAN & CHITTY, JJ.

Reference:—188 P.R. 1888, R.

(50a)—against under-proprietor, proprietor's suit for—under-proprietor not residing in the village—residence in village—village-community, member of—See ACT XVIII OF 1876 (OUDH LAWS), No. 4, 9 O.C. 271.

(51) Custom of—, whether prevalent in Tarai-Ravi, Sub-division of Multan City—See CUSTOM, No. 1, 43 P.R. 1906.

Pre-emption.—(Concluded).

(52) Suit for—Share in a law suit sold—Sale of a doubtful right—See ACT XVIII OF 1876 (OUDH LAWS), No. 8, 9 O. C. 86 (B).

(53) Suit for—of land not paying Government revenue, valuation of—See COURT FEES ACT, No. 4, A.W.N. (1906), 66.

(54) Custom of—by vicinage in respect of houses—See CUSTOM (PECULIAR TO PUNJAB), No. 22, 75 P.L.R. 1906.

(55) Custom of, by right of vicinage—See CUSTOM (PECULIAR TO PUNJAB), No. 28, 88 P. R. 1906.

(56) Suit for—in respect of a definite share in a Bhaiyachara village—Court-fees—See COURT FEES ACT (VII OF 1870), No. 5, 8 A.L. J. 511.

(57)—On sale of agricultural land on ground of vicinage—Custom—See CUSTOM (PECULIAR TO PUNJAB), No. 89, 77 P.R. 1906.

(58) Custom of—in respect of house property in Katra Moti Ram in the city of Amritsar—See CUSTOM (PECULIAR TO PUNJAB), No. 45, 99 P. R. 1906.

(59) Houses—*Mohalla Mashad* in Sonapat town in Delhi District—See CUSTOM (PECULIAR TO PUNJAB), No. 49, 85 P.L.R. 1906.

(60) Custom of—presumption as to existence of—See ACT IV OF 1872 (PUNJAB LAWS), No. 3, 110 P.L.R. 1906.

(61) Suit for—in respect of a sale under a clause of conditional sale by foreclosure of a mortgage—Limitation—See LIMITATION ACT, No. 87, 112 P.L.R. 1906.

(62) Suit for—See ACT XVIII OF 1876 (OUDH LAWS), No. 2, 9 O.C. 211.

(63)—by right of vicinage, obtaining in case of sale of house property in Amritsar—See CUSTOM (PECULIAR TO PUNJAB), No. 57, 140 P. R. 1906.

See, also, I, 761-779; Act IV of 1872 (Punjab Laws), No. 3; Customs (Punjab), Nos. 6, 9, & 30; Limitation Act, Nos. 45, 46, 47; Mahomedan Law (Pre-emption), Nos. 1 and 5; and Pleadings, No. 4.

Pre-emption Suit.

See I, Limitation Act, No. 18.

Preliminary point.

See I, Civil Pro. Code, No. 291.

Prescription.

(1) Whether a right for the discontinuance of a procession of an idol can be acquired by—See RELIGIOUS ENDOWMENTS, No. 1, 16 M.L.J. 150.

(2) Acquisition of a title by—to a place used as a burial ground for a long time—See MAHOMEDAN LAW (WAKF), No. 4, A.W.N. (1906), 159.

(3) Right to prescribe for, title to a space occupied by a building—projection of building—See LIMITATION, No. 2, 16 M.L.J. 281.

Prescriptive right.

Claim under, not inconsistent with relief on ground of proprietary right—See ALTERNATIVE CLAIM, No. 1, 4 C.L.J. 867.

Presidency Small Cause Court.

See *I, Civil Pro. Code, No. 42.*

Presidency Small Cause Courts Act.

See under ACT XV OF 1882 (IMPERIAL).

Presumption.

(1)—as to possession of waste land—See RES JUDICATA, No. 8, 9 Q.C. 32.

(2)—of marriage from co-habitation—See HINDU LAW (MARRIAGE), No. 2, A.W.N. (1906), 204.

(3)—of time being the essence of contract in case of sale, with payment of vendor's debts as consideration—See CONTRACT ACT (TRAVANCORE), No. 1, 21 T.L.R. 119.

(4)—as to the correctness of entries in a Record of Rights—See ACT VIII OF 1885 (BENGAL TENANCY), No. 41, 11 C.W.N. 48.

(5) Against heritability of maintenance grant—See MAINTENANCE, No. 2, 4 C.L.J. 399.

(6)—in S. 103 B of the Bengal Tenancy Act, applicability of, to a suit instituted before the publication of the Record of Rights—See ACT VIII OF 1885 (BENGAL TENANCY), No. 42, 4 C.L.J. 519.

See, also, *I, Evidence Act, No. 32.*

Primogeniture.

See *I, Hindu Law (Inheritance), No. 1.*

Primogeniture Sanad.

See *I, Act 1 of 1869 (Oudh Estates), No. 1.*

Principal and Agent.

(1) Person described in contract as principal, admissibility of evidence to show the real fact of the agency of, to a certain other person,

Principal and Agent.—(Concluded).

Where a party is described on the face of a contract as owner, though, in fact, he is only an agent of such owner, evidence cannot be received to show the fact of his agency, so as to give the principal the right to sue on the contract because, where a person signs a contract in his own name, without qualification, he is *prima facie* to be deemed to be a person contracting personally, and, in order to prevent his liability from attaching, to him as such, it must be apparent from the other portions of the document that he did not intend to bind himself as principal. **Pullan Pillai alias Eravi Govindan v. Raman Ramaru Kochunla Karthavu**, 21 T.L.R. 125.

GOVINDA PILLAI and PADMDNABHA AIYAR,
Jr.

Reference :—12 Q.B. 310, *F.*

(2) Implied authority of agent to borrow—Liability of principal—See CONTRACT ACT, No. 44, 33 C. 343.

(3) Rights and liabilities of undisclosed principals under the contract Act and under the Negotiable Instruments Act—See ACT XXVI OF 1881 (NEGOTIABLE INSTRUMENTS), No. 4, 1 M.L.T. 377.

See, also, *I, 780-782; Accounts, Nos. 4 and 5; Arbitration, No. 8; Contract Act, Nos. 30 and 33; Limitation Act, Nos. 69 and 71.*

Printing Presses Act.

See ACT XXV OF 1867.

Priority.

(1)—over purchaser in execution of decree under prior unregistered mortgage, of subsequent registered purchaser without notice of the mortgage—See MORTGAGE and MORTGAGEE, No. 6, 4 C.L.J. 490.

(2)—of mortgage by Receiver for preservation of estate, over subsequent equitable mortgage—See MORTGAGE (EQUITABLE MORTGAGE), No. 2, 4 C.L.J. 495.

Privy Council.

Appeal to,—Valuation of appeal—Inclusion of mesne profits in valuation—See APPEAL (PRIVY COUNCIL), No. 7, 33 C. 1286.

See, also, *I, Appeal (Privy Council), No. 4; Civil Pro. Code, Nos. 313 and 314; and Letters Patent (Calcutta), No. 3.*

Probate.

- (1) *Grant by consular Court in Zanzibar—Probate forced on grantees—Funds affected by the Probate in Bombay—Liability to duty—Scales of fees in force when probate applied for and when grant made—Jurisdiction of Bombay High Court to enforce payment—Zanzibar orders in Council, 1884 & 1897—44 Vic.Ch. 12, S.27.*

A decree was made by the High Court of Bombay, in a suit for the administration of the property and credits of the late Sir Tharia Topan situate in Bombay, Zanzibar and other parts of South Africa; and the Receiver appointed in that suit collected all the assets with the exception of a house in Zanzibar which was specifically devised to Musa, who was one of Sir Tharia's sons and also a residuary legatee interested in the said funds. Musa died on 21st January, 1892, in Bombay leaving a will. Musa's executors thereupon applied for probate to the Consular Court at Zanzibar under its order on 2nd March, 1897, when probate thereof was not necessary and also filed, in the Bombay High Court, a suit in which a decree was made for administration of Musa's estates, authorising the same Receiver to sell out and retain the assets as Musa's Receiver also. On 22nd October, 1897, the order for grant of the probate was issued, and by a subsequent order, dated 25th October, 1898, the executors were directed to take out probate at once, and to pay duty on the value of the estate when it was ascertained thereafter. On 21st July, 1903, it was *inter alia* ordered that the said house be sold, and duty at 3 o/o on Rs. 400,000 recovered from the proceeds. From this order, the Receiver and two of Musa's legatees, as beneficiaries under his will, appealed, by way of a motion by consent, to the Bombay High Court, and resisted the order for payment of the duty on various grounds.

Held (1) that, as Musa's estate was being administered under a decree of the High Court of Bombay, it was under their control and within their power to direct payment of probate duty thereon in the course of administration;

(2) that the ground of probate forced upon executors should be addressed to the Revenue authorities at Zanzibar and the Bombay High Court had no concern therewith, and can only deal with the fact that probate has been issued, as regards the legal liability to duty.

(3) The liability to duty of the funds in Bombay must be determined by a reference

Probate.—(Concluded).

to the Zanzibar Orders in Council, 1884 and 1897, and the Rules issued thereunder. Clause 29 of the Zanzibar Order of 7th July, 1897, the Indian Succession Act, which applies to Zanzibar as if it was a district in the Presidency of Bombay; and S. 242 of that Act, gives effect to probate over all property throughout the Province and is conclusive against all debtors and persons holding property of the testator. By a Rule dated 3rd May, 1898, and made under Zanzibar Order in Council, 1884, a scale of fees dated 11th October, 1898, superseding a previous Table of Fees of 3rd May, 1893, was fixed, whereby, in respect of any proceedings in the Zanzibar Court, the same sum was leviable as was payable in England under 44 Vic. c. 12 in like cases. The second scale of fees, being in force at the time the probate was granted and not the first Table when the probate was applied for, regulates the amount of duty payable under 44 Vic. c. 12, S. 27 at the rate of £3 on every full sum of £100 on the estate and effects above the value of £1000 situate in Bombay.

Musa's share, therefore, in Sir Tharia Topan's estate in the hands of the Receiver is liable to probate duty at the aforesaid rate; and such duty, when the amount is ascertained, shall be paid to His Britannic Majesty's Consul General at Zanzibar by him out of the funds in his hand representing Musa's interest under Sir Tharia's will. **N. C. Macleod v. H. B. M's Consul General, Zanzibar**, 8 Bom. L. R. 725.

JENKINS, C.J., and BARRY, J.

(2) Court granting, competency of, determine validity of the will—See **WILL**, No. 5, 1 M.L. T. 71.

(3) Mahomedan will—Effect of, to grant of—See **MAHOMEDAN LAW (WILL)**, No. 2, 9 C.W.N. 938 (P.C.).

See, also, 1, Act V of 1881 (*Probate and Administration*), No. 1; Act VII of 1889 (*Succession Certificate*), No. 2; *Mahomedan Law (Will)*, No. 1; and *Will*, No. 1.

Probate and Administration Act.

See **ACT V OF 1881 (IMPERIAL)**.

Procedure.

(1) Decree upon a compromise for execution of a conveyance to be proceeded with a decree for specific performance—See **EXECUTION OF DECREE**, No. 2, 10 C.W.N. 345.

Procedure.—(Concluded).

(2)—in sanctioning compromise on behalf of a minor—Order to state in terms that the question, whether the compromise was for the benefit of the minors, was considered—See COMPROMISE, No. 1, 29 M. 104.

(3) Suit by Manager of Joint Hindu Family, for debt due to family—Non-joinder of other members—See HINDU LAW (JOINT FAMILY), No. 15, 69 P.R. 1906.

(4)—in cases of an application for review of judgment—See CIVIL PROCEDURE CODE, No. 387, 7 Bom. L.R. 604.

(5) Guardian *ad litem* appointed without complying with provisions of S. 443 of the Civil Procedure Code—Appointment invalid—Effect of such invalid appointment on decree passed in the suit—See CIVIL PROCEDURE CODE, No. 289, A.W.N. (1905), 229.

(6) Application for attachment of debts said to be due to judgment-debtor—Denial of debts by alleged debtors—What the Court should do—See EXECUTION OF DECREE, No. 5, A.W.N. (1905), 277.

(7) Second appeal—Appeal to lower appellate Court by respondent in High Court insufficiently stamped—See COURT-FEES ACT, No. 10, A.W.N. (1905), 280.

See, also, *I, Appeal (Civil), No. 26; Civil Pro. Code, Nos. 27, 300, 314; Remand, No. 13, Sale in Execution of Decree, No. 3; Will, No. 8.*

Proclamation.

(1) Omission to affix, on spot of sale, whether vitiates the sale—See CIV. PRO. CODE (TRAVANCORE), No. 5, 21 T.L.R. 157.

(2)—of sale, place for sale fixed in—Conducting the sale elsewhere whether a material irregularity—See CIV. PRO. CODE, No. 167, 192 P.R. 1906.

See, also, *I, Act XI of 1859 (Bengal), No. 3. Profits.*

Suit for—by one sharer against co-sharer who has mortgaged his share—Joinder of co-sharer and his mortgagee as parties—See CO-SHARERS, No. 2, 9 O.C. 142.

Promissory note.

(1) Collateral agreement not to sue for a time—Such covenant by distinct letter no bar to suit on the note within the time.

On M executing to W the promissory note sued on, the latter handed over a letter to the

Promissory note.—(Continued).

former agreeing not to sue for the money due under the pro-note except on the fulfilment of the conditions or the happening of the contingencies specified in the letter. Admittedly, when they were entering into the above arrangement, W did not consent to what was stated in the letter finding a place in the pro-note itself. Held, N having consented to the agreement being effected by two distinct instruments, it cannot possibly be taken that the intention of the parties was otherwise than to keep the two documents as evidence of two separate contracts, the letter operating only as a collateral covenant not to sue on the pro-note until a specified time. Such a distinct covenant cannot be pleaded in bar to an action on the pro-note or can it suspend the right of action on the same even until the time specified in the letter. *Somasundaram Chettiar v. Narasimhachariar*, 16 M.L.J. 108=29 M. 212.

SUBRAHMANYA AIYAR and DAVIES, JJ.

(2) *Absence of consideration for the making of the note—Rights of a bona fide holder in due course for consideration and without notice of want of consideration.*

Notwithstanding the fact that a promissory note was executed without consideration, a bona fide holder in due course for consideration, and without notice of any want of consideration for the making of the note, is entitled to a decree on the note. *Santhana Gopaulaswami Odayar v. Sundaraswami Odayar*, 1 M.L.T. 393.

BENSON, J.

(3) *Execution of promissory note not proved—Decree for the sum lent when loan admitted—Onus of payment when defendant admits execution—Cause of action—Suit for money lent.*

A certain sum of money was due to the plaintiff's father from one T, under a mortgage and some decrees for arrears of rent. The defendants settled the amount, on behalf of T with the plaintiff's father, by paying him something in cash and executing a promissory note for Rs. 500, in his favour. The plaintiff sued the defendants for the recovery of money due on the promissory note. The defendants admitted the execution of a promissory note for Rs. 500 on the same date and in terms identical with the promissory notes set up by the plaintiff but pleaded that the debt had been discharged and

Promissory note.—(Continued).

the promissory note had been returned to them duly endorsed with a receipt written by plaintiff's father. They, however, denied the genuineness of the promissory note filed with the plaintiff.

The lower Courts found that the endorsement on the back of the promissory note set up by the defendants and the fact of the payment were not proved.

Held, that the promissory note was the sole cause of action in the suit and the plaintiff had not sued and could not sue on the ground of defendants' liability independently of the promissory note set up by the plaintiff and, having failed to prove the payment, the onus of which lay on them, the plaintiff was entitled to a decree (a). **Syed Husain v. Babu Durga Charan**, 9 O.C. 815.

RYVES, J. C.

References:—(a) 28 C. 851, 6 O.C. 16, 5 C.W.N. 56, 7 C. 256 and 26 A. 178, R.

(4) *Endorsement on,—Intention to effect a transfer.*

When the direction to pay is endorsed upon an instrument, which is not negotiable under S. 13 of the Negotiable Instruments Act, so that both are handed over together to the endorsee, the intention to effect a transfer must be inferred, and the endorsement operates as a valid equitable assignment. **Rama Iyen v. Yenkaśachellam Patter**, 1 M.L.T. 329=16 M.L.J. 554.

SUBRAHMANIA AIYAR & MILLER, JJ.

(5) *Indorsement and delivery in blank, effect of*—See ACT XXVI OF 1881 (NEGOTIABLE INSTRUMENTS), No. 5, 9 P.R. 1906.

(6) *Person unauthorisedly obtaining renewal of a—*is trustee for the rightful owner thereof—See MISJOINDER OF PARTIES, No. 3, 29 M. 87.

(7)—*not containing words of negotiability, whether could be assigned by endorsement*—See ACT XXVI OF 1881 (NEGOTIABLE INSTRUMENTS), No. 2, 144 P.R. 1906.

(8)—*by karta of joint Hindu family, other members when liable on*—See ACT XXVI OF 1881 (NEGOTIABLE INSTRUMENTS), No. 3, 11 C.W.N. 189.

(9) *Consideration existing originally and independent of—Maintainability of suit for such consideration otherwise than upon the pro-note*

Promissory note.—(Concluded).

itself—See CAUSE OF ACTION, No. 1, 15 M.L.J. 484.

See, also, I, Act XXVI of 1881 (Negotiable Instruments), No. 4; and Cause of Action, No. 17.

Proofs.

—to correspond with allegations in the pleadings—See PLEADINGS, No. 3, 4 C. L. J. 870.

Property.

Mercantile—, whether pre-emption obtains in cases of sales of—See PRE-EMPTION, No. 46, 111 P.R. 1906.

Proprietary right.

Relief on the ground of, claimable in the alternative, with a claim under a prescriptive right—See ALTERNATIVE CLAIM, No. 1, 4 C.L.J. 367.

Prosecution.

Stifling of—, what is—See HINDU LAW (DEBTS), No. 3, 3 A.L.J. 506.

Prostitute.

Succession to the estate of a Hindu—See HINDU LAW (INHERITANCE), No. 7, 10 C.W.N. 1085.

Protection of Judicial Officers Act.

See ACT XVIII OF 1850.

Provincial Small Cause Court.

See I, Civil Pro. Code, No. 98.

Proxy.

See I, Company, No. 1.

Public Demands Recovery Act (Bengal).

See ACT VII OF 1880 (BENGAL).

See, also, ACT I OF 1895 (BENGAL).

Public Duties.

See I, Specific Relief Act, No. 30.

Public Policy.

(1) *Execution of murderer and his descendants from inheriting to the property of the deceased their succession being opposed to*—See INHERITANCE, No. 1, 41 P.R. 1906.

(2) *Agreement opposed to—Agreement supply funds for suit*—See CONTRACT ACT, No. 8, 26 P.R. 1906.

(3) *Contract to sell intoxicating drugs.* See CONTRACT ACT, No. 12, 3 A.L.J. 802.

(4) *Arrangement to secure to one creditor an advantage over the others—Validity of contract*—See CONTRACT ACT, No. 11, 16 M.L.J. 418.

Public Policy.—(Concluded).

*See, also, I, Contract Act, Nos. 5, 8 and 18 ;
Husband and wife, No. 1 ; and
Right of Suit, No. 23.*

Public Trusts.

See under TRUSTS.

Puisne Mortgages.

*See I, Mortgage (Foreclosure), No. 5 ; and
Mortgage (Redemption), No. 18.*

Punjab Alienation of Land Act.

See ACT XIII OF 1900 (PUNJAB).

See, also, I, Pre-emption, No. 15.

Punjab Courts Act.

See ACT VIII OF 1884 (PUNJAB).

See, also, I, 785-786.

Punjab Excise Act.

See ACT XII OF 1896 (PUNJAB).

Punjab General Clauses Act.

See I, Act I of 1904 (Punjab), No. 1.

Punjab Land Revenue Act.

See ACT XVII OF 1887 (PUNJAB).

Punjab Laws Act.

See ACT IV OF 1872 (PUNJAB).

See, also, I, 786.

Punjab Limitation Act.

See ACT I OF 1900 (PUNJAB).

Punjab Loans Limitation Act.

See Act 1 of 1904 (Punjab).

Punjab Tenancy Act.

See ACT XVI OF 1887 (PUNJAB).

Purbia Kurmis.

Adoption of grandson of father's sister among
—Validity thereof—*See HINDU LAW (ADOPTION),
No. 2, A.W.N. (1905), 235.*

Purchase-money.

See I, Civil Pro. Code, No. 129.

Purchaser.

(1) Title of, on estoppel of vendor, under S.
41 of the Transfer of Property Act—*See ES-
TOPPEL, No. 1, 21 T.L.R. 236.*

(2)—at execution sale—Purchase with
knowledge of defective title—Right to refund of
purchase-money. *See CIV. PRO. CODE, No.
185, 3 A.L.J. 819.*

See, also, I, Civil Pro. Code, No. 199.

Putni lease.

See I, Landlord and Tenant, No. 11.

Question of Fact.

See I, Contract Act, No. 25.

Quorum.

—in a Board of Directors of a Company, rule
as to—Powers of a single member remaining on
the Board—*See COMPANY, No. 1, 8 Bom. L.R.
478.*

Railway Company.

Non-delivery of goods by, suit for compen-
sation for, applicability of Art. 81 of the Limita-
tion Act to—*See LIMITATION ACT (XV OF 1877),
No. 47, 108 P.R. 1906.*

Railways Act (IX of 1890).

See under ACT IX OF 1890 (IMPERIAL).

Ratification.

See I, Company, No. 3.

Reasonable and probable cause.

Want of—is a question of fact—*See MALI-
CIOUS PROSECUTION, No. 8, 7 Bom. L.R. 655.*

Receiver.

(1)—acknowledgment by—effect of, on limi-
tation—*See LIMITATION ACT, No. 28, 10 C.W.N.
959.*

(2) Mortgage of joint-property executed by,
attaching creditors of the property, if entitled
to priority over—*See MORTGAGE (GENERAL),
No. 16, 33 C. 1175.*

*See, also, I, 787-789 ; Civil Pro. Code, Nos.
65, 68 and 254.*

Recital.

See I, Specific Relief Act, No. 10.

Record of rights.

(1) Final publication of—under S. 108 A (2)
of the Bengal Tenancy Act, effect of—*See ACT
VIII OF 1885 (BENGAL), No. 27, 3 C.L.J. 138.*

(2) Entry in—of a certain person as tenant—
such person not precluded from proving he is a
proprietor—*See ATTESTATION, No. 1, 2 N.L.R.
65.*

(3) An entry in the—with regard to payment
of rent cannot be altered during mutation
proceedings—*See ACT XVII OF 1887 (PUNJAB
LAND REVENUE), No. 2, 4 P.R. 1905 (Rev.)*

*See, also, I, Act VIII of 1885 (Bengal), Nos.
28 and 31.*

Record of suit.

See I, Oath, No. 1.

Rectification.

—of instruments—Relief on the ground of mutual mistake—See SPECIFIC RELIEF ACT, No. 7, 8 Bom.L.R. 354.

See, also, *I, Contract, No. 7 and Specific Relief Act, No. 13.*

Rectification of instrument.

—by insertion of a clause deliberately agreed to be omitted—See SPECIFIC RELIEF ACT, No. 6, 2 N.L.R. 49.

Re-entry.

Right of—when perpetual lease contains no covenant therefor in case of breach of condition against alienation—See LEASE, No. 1, 3 A.L.J. 196.

Reference.

Under what circumstances a—can be made to the High Court—See CIVIL PRO. CODE, No. 328, 7 Bom. L.R. 995.

Refund.

Essentials for obtaining—of purchase-money paid to judgment-creditor in execution sales. See CIV. PRO. CODE, No. 185, 3 A.L.J. 819.

See, also, *I, Civil Pro. Code, No. 129; Company, No. 4.*

Registrar.

See *I, Limitation Act, No. 24.*

Registration.

(1) *Registration—Compromise of suit—pleadings not to be construed with strictness.*

Each document of which the registration is alleged or denied to be compulsory must be judged of strictly on its own merits and care must be taken not to decide one case on the analogy of the decision in another case unless the document in each case is practically of the same purport and character (a).

An application to Court containing the terms of a compromise in whatever language it might be couched cannot properly be treated as the original contract between the parties to the case in which it was made; it must be held to be a mere recital of the contract independently entered into between them (b).

A compromise in so far as it is submitted to and is acted upon judicially by Court being in itself a step of judicial procedure does not require registration (c).

Held, that the petition addressed to the Court embodying the terms of a compromise

Registration.—(Continued).

arrived at between the parties and given effect to by the Court at the request of the parties did not require registration and was admissible in evidence, though it was unregistered (d).

In this country a plaint and the pleadings of parties should not be construed with absolutely literal strictness.

Where a suit filed on behalf of a *pardahnishin* lady was described in the plaint as based on a *razinama* and the admissibility of the document in evidence having been disputed for want of registration, the plaintiff sought to rely on the oral agreement which resulted in the *razinama*—

Held, that the plaintiff might be allowed to do so. *Khairul-nissa v. Bahadur Ali*, 11 P.J. R. 1906.

ROBERTSON and RATTIGAN, JJ.

References.—(a) 97 P.R. 1895, R. (b) 98 P.R. 1902=18 P.L.R. 1908, R. (c) 22 M. 508 (519), Refd. to. (d) 76 P.R. 1887; 25 M. 553, 95 P.R. 1894 and 30 C. 783, Refd. to.

(2) *Will—Proof—Identifiers—Admissibility of evidence—General reputation, evidence of—Registration—Presumption.*

The registration is a solemn act to be performed in the presence of a competent official appointed to act as Registrar, whose duty it is to attend to parties during the registration and see that the proper persons are present and are competent to act and are identified to his satisfaction; and all things done before him in his official capacity and verified by his signature will be presumed to be done duly and in order.

When the Judge in the Court below had stated that the "general reputation of character which the two identifiers enjoyed" tended to throw a cloud of doubt upon the *bona fides* of the transaction, held that such evidence of the general reputation of the character of those persons who had both been dead ought not to have been admitted at all. *Gangamoyi Debi v. Trolluckhya Nath Chowdhri*, 3 C.L.J. 349 (P.C.)=10 C.W.N. 525=38 C. 537=8 Bom. L.R. 375=1 M.L.T. 131=16 M.L.J. 161.

LORD MACNAGHTEN, SIR FORD NORTH, SIR ANDREW SCOTIE, and SIR ARTHUR WILSON.

(3) *Non-delivery of document by executant to execute after registration, effect of—Validity of such document—Transaction whether completed.*

Registration.—(Continued).

Suit on a mortgage deed executed by defendant to plaintiff. The deed was presented for registration by the defendant and registered at his instance, but it was not delivered to plaintiff. The contention of the defendant was that the deed was invalid for want of delivery; *held*, there is no provision of law in this country requiring that a registered deed shall not operate until it is delivered to the person claiming under it. Further, the presentation of such document by the party executing it to the registration Officer and its subsequent registration must be regarded as equivalent to the formality of delivery prescribed for writings under seal by the law of England. **Kanshi Ram v. Tota Ram**, 40 P.R. 1906.

JOHNSTONE and RATTIGAN, JJ.

(4) *Razinamah, whether requires registration and when.*

Arasinamah, in so far as it is submitted to, and acted upon judicially by a Court, is, in itself, a step of judicial procedure not requiring registration (a). But, so far as regards such of its stipulations and provisions, as have not been incorporated with, and given effect to by, the order of a Court, it would not be exempt from, but be governed by, the provisions of the Registration Act. **Patha Muthammal v. Esup Rowther**, 29 M. 865.

MOORE and SANKARAN NAIR, JJ.

Reference.—(a) 22 M. 508 (P.C.), F.

(5) *Invalidity of document for want of registration, objection regarding, when could be raised.*

In a suit on a compulsorily registrable, but unregistered, deed, the point as to the invalidity of the deed for want of registration was taken for the first time at the hearing of the second appeal. *Held*, the plea ought to be considered, though taken so late, the point being one which a Court ought to take Judicial notice of. **Sahab Lal v. Sukh Lal**, 2 N.L.R. 121.

DRAKE-BROCKMAN, A.J.C.

References.—2 B. 489, 2 A. 554, 3 A. 157 & 19 W.R. 22, F., 3 B.L.R. 125 & 11 W.R. 381, Diss., 13 A. 800 & 14 C.P.L.R. 42, R.

(B) Sale, voidable by vendor on account of vendee's default, cannot be regarded complete by mere—of deed—See CONTRACT ACT (TRAVANCORE), No. 1, 21 T.L.R. 119.

Registration.—(Continued).

(7) Admissibility in evidence of compulsorily registrable unregistered document for collateral purpose.—See CUSTOMS (PUNJAB), No. 38, 148 P.L.R. 1906.

(8) Registered sale deed—Effect of, although the purchase money not paid—See SALE, No. 1, 1 M.L.T. 482.

(9) Unregistered sale-deed confirming an oral sale of land—Subsequent registered conveyances intended to defeat the prior unregistered deed, Fraudulent execution of, effect of—See ACT II OF 1882 (TRICERS), No. 6, 15 M. L. J. 478.

See, also, I, 790; and Execution of Decree, No. 84; Mortgage (Miscellaneous), No. 18; Registration Act, Nos. 12 and 14; Tenancy Act (C.Prov.), No. 3.

Registration Act (III of 1877).

(1) *Splitting up of a transaction, validity of.*

Where a person borrowed Rs. 198 and executed two unregistered mortgage bonds for Rs 99 each on the same date, *held*, that, as there was nothing in the Act which forbade the splitting up of a transaction in this manner, the bonds were valid. **Ramji Mal v. Chhote Lal**, 8 A. L. J. 661=A. W.N. (1906), 281.

STANLEY, C. J., and RUSTOMJEE, J.

S. 3—See I, Transfer of Property Act, No. 80.

(2) *Ss. 3 and 17—Unregistered amalnama not forming lease or agreement to lease, admissibility in evidence of, in suit for ejectment.*

The question raised in this appeal was whether certain documents produced by the defendant in answer to the plaintiff's claim which was one for ejectment, were inadmissible in evidence for want of registration. The documents were described as *amalnamas* and had been granted to the defendant by the plaintiffs' lessor. By those documents, the defendant was permitted to clear the jungle and hold the land without payment of any rent for 9 years and, on the expiration of that period, the lands were to be measured and assessed and granted on *patta* to the defendant on execution of a *kabuliat* by him. No lease was granted to the defendant in accordance with the *amalnamas* that he was allowed to hold on upon payment of rent. On the point whether the *amalnamas* above mentioned were documents which, having regard to S. 17 of the Registration Act, required registration, *held*, they were neither leases nor

Registration Act (III of 1877).—(Continued).

agreements to lease within S. 8 of the Act and should, therefore, be admitted in evidence without registration. **Dwarka Nath Saha v. Ledu Sikdar**, 83 C. 502.

GHOSH and PARGITER, JJ.

Reference.—7 C. 733, D.

Ss. 3 and 17 (d)—See I, 791, No. 3.

(3) Ss. 7, 30 (a), 87—*District Registrar—Sub-Registrar, power of—Registration of a deed concerning lands situated in separate Registration sub-district.*

A Sub-Registrar, who was empowered, under S. 7 of the Act, to discharge the duties of a Dist. Registrar, registered a bond which might have been registered by the Registrar at his discretion under S. 30 (a) of the Act.

Held, that the bond was validly registered and that any doubt as to the validity of the registration was removed by S. 87 of the Act (a). **Jogeshwar Narain Singh v. Rai Radha Rawan**, 3 C.L.J. 165.

PRATT and PARGITER, JJ.

Reference.—(a) 18 C. 556, D.

(4) S. 17—*Agreement to convey and possession given to transferee—Conveyance by registered deed to transferee who has notice of previous agreement—Estoppel.*

It was agreed amongst certain successful plaintiffs, who by decree of Court had become entitled to a large estate, that a certain relative who had helped them in their suit should have a share in the property, and this agreement was carried out to the extent that this person's name was entered in the village papers as a co-sharer and he was put into possession by consent of the other co-sharers, but no conveyance of the share was executed and registered. Subsequently one of the original donors purported to sell the share so assigned to a person who had notice of the terms upon which it was held by the original donee. *Held*, that this sale, even though carried out by means of a registered instrument, was ineffectual as against the rights of the original donee, inasmuch as both the vendor knew that, in equity, he could not have a title to convey, and the vendee also was aware that the vendor could not convey without committing a fraud on the original donee. **Annu Mal v. The Collector of Bareilly**, A.W.N. (1906), 17 = 3 A.L.J. 100 = 28 A. 315.

STANLEY, C.J. and BURKITT, J.

Registration Act (III of 1877).—(Continued).

References.—1 Johnson and Hemming, 702; 14 Ch. D. 563 and 3 Atk. 646, R.

(5) S. 17—*Registration—Sale of standing timber—Immovable property.*

Held, that a document which purported to be a "theka" of a certain portion of a forest "for all kinds of trees" for two years was not a document conveying an interest in immovable property and did not require to be registered. **Mathura Das v. Jadubir Thapa**, A.W.N. (1906), 4 = 3 A.L.J. 188 = 28 A. 277.

AIKMAN, J.

Reference.—20 M. 58, D.

(6) S. 17—*Registration—Compromise of suit embodied in a decree.*

In a suit for possession of certain plots of land reference was made, as part of the evidence in the case, to a compromise in a previous suit relating to other lands, but which dealt also with the lands in suit and had been incorporated into the decree of the Court in the previous suit. *Held*, that such compromise did not require registration and was admissible in evidence. **Raghubans Mani Singh v. Mahabir Singh**, A.W.N. (1905), 195 = 2 A.L.J. 564 = 28 A. 78.

BANERJI and RICHARDS, JJ.

References :—20 A. 171 and 22 M. 508, *Refd.* to, 1 C.L.J. 383, *considered*.

(7) S. 17—*Compromise—Petition in suit affecting immovable property, necessity for registration of—Admissibility in evidence when unregistered.*

A *razinama* stamped with eight-anna Court fees stamp and presented to a Court in a suit relating to immovable property of over Rs. 100 in value setting forth the names of the parties and the nature of the suit and containing a prayer to dismiss the suit in accordance with its terms is not a document requiring to be registered under S. 17 of the Act (a). Whether such document actually contains the contract between the parties to it, or whether the agreement was actually made prior to the writing of the document, the latter being merely a memorandum of the oral contract and intended solely as a petition to the Court with a view to its taking action in accordance with the arrangements made out of Courts (b) neither creates nor declares any rights so as to be compulsorily registrable under the section. Moreover, the

Registration Act (III of 1877).—(Continued).

rarinamah, in so far as it was submitted to and was acted upon judicially by the learned Judges, was in itself a step of judicial procedure not requiring registration (c). **Khair-ul-Nisa v. Bahadur Ali**, 27 P.R. 1908.

ROBERTSON and RATTIGAN, JJ.

References.—(a) 76 P.R. 1897 and 25 M. 553, D. (b) 95 P.R. 1894 and 98 P.R. 1902, F. (c) 22 M. 508, F. and 80 C. 783, D.

(8) S. 17—

A release executed in writing by a mortgagee in favour of an assignee of a portion of the properties mortgaged, is inoperative unless registered, where the interest sought to be extinguished by it is of the value of Rs. 100 or upwards. **Imam Ali v. Baij Nath Ram Sahu**, 10 C.W.N. 551 = 9 C.L.J. 576 = 33 C. 613.

MACLEAN, C.J. and MOOKERJEE, J.

References.—2 A. 554, 2 B. 489, 16 W.R. 56, 2 P.L.R. 615, R.

(9) S. 17—Document creating a future right of the value of upwards of one hundred rupees in immovable property.

Where M sold property to D by a registered sale-deed for Rs. 399 and on the same day agreed by an unregistered deed to re-transfer the property for Rs. 150 on the last day of *Jeth* in any year. *Held*, that the latter document not having been registered effect could not be given to it. **Suraj Pershad v. Phul Singh**, A.W.N. (1906), 180.

AIKMAN, J.

(10) S. 17—See No. 2, *supra*.

See, also, I, 791-793, Nos. 4, 5, 6, 7, 8 and 9.

(11) Ss. 17, 18, 21, 24, 77—Document evidencing relinquishment of a share by a daughter to her father in his property—Registration—Refusal to register on the ground that the document did not contain sufficient description of the property—Discretion of the Registrar—Jurisdiction of Civil Court—Right of heir to succeed—Vested or contingent estate—Transfer of Property Act (IV of 1882), Ss. 6, 19, 21—Indian Succession Act (X of 1865), S. 107—Spes Successionis—Mahomedan Law—Document—Alteration.

A document, executed by a daughter in favour of her father (the parties being Mahomedans), provided that, in consideration of her receiving Rs. 9,000, she had relinquished all her

Registration Act (III of 1877).—(Continued).

rights and claims to any property there may be on her father's death. This document was presented to the Sub-Registrar of Bombay for registration; the Registration-fee was taken and payment thereof was endorsed on the document. The registration was subsequently refused on the ground that the document did not contain a sufficient description of the immovable property to which it related (S. 21 of the Indian Registration Act, 1877). In a suit under S. 77 of the Act, *Held*, (1) that the document cannot be treated as relating to property, much less can it relate to immovable property, capable of being described and identified and S. 21 of the Act cannot apply to it;

(2) that even taking the document as relating to immovable property, it contains not only a sufficient, but the only, description that can be given of it;

(3) that the document does not fall within the category of any of the documents mentioned in S. 17 of the Registration Act but that it falls within cl. (d) or cl. (f) of S. 18 of the Act.

Where a Sub-Registrar or Registrar has exercised his discretion under S. 24 or S. 21 of the Indian Registration Act, and accepted a document for registration, though subsequently he refuses to register it, the Court, in a suit under S. 77 of the Act, has no power to enquire into the propriety of his finding and direction as such acceptance.

The direction under S. 21 of the Indian Registration Act, 1877, arises only where a non-testamentary document 'relates to immovable property.' Where it does not relate, the section cannot apply and the discretion cannot arise. And into this question, it is open for a Civil Court to inquire in a suit under S. 77 of the Act.

The right of a son or daughter or other heir of a person to inherit that person's property on his death is not an estate in remainder or in reversion in immovable property or an estate otherwise deferred in enjoyment. It is neither a vested nor a contingent right. It does not come within the definitions of a 'vested interest' in S. 19, or of 'a contingent interest' in S. 21 of Transfer of Property Act and S. 197 of the Indian Succession Act. So far from being a vested or contingent right in present or in future, it is, in the language of cl. (a) of S. 6 of the Transfer of Property Act, 'the chance of an

Registration Act (III of 1877).—(Continued).

their apparent succeeding to an estate on a mere possibility of succession which cannot be transferred.

A mere *spes successionis* is unknown to, and not recognised by, the Mahomedan Law.

The alteration of a document to be material must affect the legal effect of the contract so as to make it cease to be the same instrument. **Abdool Hossain Mulla v. Goolam Hossain Ally**, 7 Bom. L.R. 742=80 B. 804.

CHANDAVANKAR, J.

Ss. 17, 23 to 26, and 77—I, 795, No. 11.

(12) Ss. 17, 48—Mofussil property—Mortgage by deposit of title deeds with creditor's agent in Calcutta—Sub-mortgage by deposit of the mortgage-deed does not require registration—See MORTGAGE (EQUITABLE MORTGAGE), No. 1, 10 C.W.N. 276.

Ss. 17 (b) and 47—See I, 796, No. 12.

(12-a) S. 17, cl. (i)—Award—Instrument of partition.

An award is exempt from registration, under cl. (i) of S. 17 of the Act, and is not rendered compulsorily registrable, by reason of the fact that it is chargeable with stamp duty as an instrument of partition, under Art. 45 of the Second Schedule of the Stamp Act, 1899.

Where the award stated that, out of the entire land of the parties, certain shares were allotted to them by the arbitrators, and the rent due by the tenants was divided in certain other shares, and the award was signed by the arbitrators and also by the parties, to signify their consent to the arbitration and its result, *held*, that the award was not compulsorily registrable. **Gulab Singh v. Mohar Singh**, 160 P.L. R. 1906.

RATTIGAN & CHIFFY, JJ.

Reference:—9 B. 50, B.

(13) Ss. 17 (b), 49—Award by arbitrator, making partition of immovable property of over Rs. 100, compulsorily registrable—Secondary evidence of, inadmissible under S. 91, Evidence Act.

Where two co-parceners, by agreement, appointed a sole arbitrator to effect a partition of their joint ancestral property and consented that the partition effected by the arbitrator, by taking the bids of the parties for the property, will be accepted, and the award was thereon made and written up on the back of the said agreement (which was not registered), *held*, that

Registration Act (III of 1877).—(Continued).

the document was intended to be, and was regarded by the parties as, an instrument declaring rights in or to immovable property and that, since it did 'operate to declare' such rights in immovable property of value exceeding Rs. 100, it was an instrument compulsorily registrable, and being unregistered, not receivable in evidence and that further, by reason of S. 91 of the Indian Evidence Act, it was not open to the parties to prove the partition, independently of the document, by oral evidence *aliunde*. **Azimat Singh v. Kalwant Singh**, 71 P.R. 1906.

JOHNSTONE and RATTIGAN, JJ.

References.—4 B. 126, 18 M. 255, 9 A. 108, 48 P.R. 1905, 175 P.L.R. 1905, D.

(14) S. 17 (b)—Assignment of charge on immovable property.

When a charge from a sum exceeding rupees one hundred on immovable property is assigned by deed, the document requires registration under cl. (b) of S. 17 and the fact that the consideration for the assignment is stated in the deed as less than rupees one hundred does not make the registration of the deed optional. **Bam Sarup v. Mubarak Singh**, 190 P.L.R. 1905=1 P.R. 1906.

CLARK, C.J.

References.—23 C. 450; 18 A. 89, *Dstd.* 2 B. 97; 18 M. 454, *not F.* 11 Bom. H.C.R. 149, H.

(15) S. 17 (b)—Registration—Partition deed—Document relating to both movable and immovable properties.

An unregistered instrument of partition relating to both movable and immoveable properties of the value of one hundred rupees and upwards is inadmissible in evidence for want of registration, and the Court is not at liberty to refer to such portions of it as relate to movable property. **Bua Ditta v. Mussammat Ganga Devi**, 119 P.L.R. 1906.

ROBERTSON, J.

See, also, I, 793, No. 9-a.

(16) S. 17 (d)—Lease exceeding one year—Registration.

A lease, under which the lessor agrees to let his premises for a period of one year and also agrees "not to increase, nor to have the premises vacated for further two years, if the said tenant wish to occupy it for that period," is

Registration Act (III of 1877).—(Continued).

not compulsorily registrable under the provisions of S. 17 (d) of the Act. **Benin Menahim Yousaf v. John Poleologo**, 8 Bom. L.R. 580.

SIR LAWRENCE JENNINGS, C.J. and BEAMAN, J.

See, also, I, 791, No. 2.

S. 17 (h).—See I, Transfer of Property Act, No. 12.

(17) S. 18.—*See No. 11, supra.*

(18) S. 21.—*See No. 11, supra.*

(19) S. 24.—*See No. 11, supra.*

(20) S. 30 (a).—*See No. 3, supra.*

(21) Ss. 32, 33 and 87.—*Validity of registration—Power of attorney—Authority of registering officer.*

One Daulat Ram, after selling certain immovable property to Mussammat Ram Bai, the mother of the plaintiff, on the 6th August, 1900, sold the same property again on the 12th August, 1900, to the defendant. The latter sale-deed was duly registered on the 18th August, 1900 and on the same day, the sale-deed of the 6th August, 1900, was presented for registration by a pleader acting under a power of attorney from Musammat Ram Bai. The power of attorney admittedly was not executed or authenticated in accordance with the provisions of S. 33 of the Registration Act. The registering officer, however, took no notice of the defect; and after summoning Daulat Ram, who admitted execution, registered the sale-deed of the 6th August on the 17th November, 1900.

Held that the document of the 6th August had not been legally registered. The terms of Ss. 32 and 33 of the Registration Act are imperative and proper presentation by an authorized agent is an indispensable foundation of the registering officer's jurisdiction; nor was the error of the Sub-Registrar a mere defect in procedure that could be cured by S. 87 of the Registration Act or by the fact that the executant, when summoned by the registering officer, consented to the registration of the sale deed of the 6th August. **Ishri Parshad v. Balj-nath**, A.W.N. (1906), 195=3 A.L.J. 743.

STANLEY, C.J. and KNOX, J.

(22) S. 33.—*See No. 21, supra.*

(23) S. 35.—*Gift to wife—Registration by the donor himself, if necessary—Admission of execution by wife as donor's representative.*

Registration Act (III of 1877).—(Continued).

A Hindu executed a deed of gift in favour of his wife and died and the deed was subsequently registered at the instance of the widow. *Held*, the widow being entitled in the circumstances of the case to letters of administration to the estate of the donor, was *prima facie* qualified to admit execution of the document as his "representative" within the meaning of S. 35 of the Act, the fact, that she herself was the donee under the document being immaterial. **Bhabatosh Banerjee v. Sheikh Soleman**, 10 C.W.N. 717=33 C. 584.

MACLEAN, C.J. and GEIDT, J.

Reference.—23 M. 580, R.

S. 47.—See I, 797, Nos. 14 and 796, No. 12.

(24) S. 48.—*See No. 12, supra.*

(25) S. 49.—*See No. 13, supra.*

See, also, I, 798, No. 15.

(26) S. 50.—*Retrospective effect—Statutes, construction of—unregistered mortgage of 1861—Act XIX of 1843, S. 2—Act XVI of 1864—Subsequent registered mortgage.*

It is a well-recognised principle of law of the construction of statutes, specially when the rights and liabilities of the parties are altered thereby, that they are not to have retrospective operation unless the language is such as plainly to require such a construction. Hence where an unregistered mortgage was made in 1861, when registration was not compulsory, and a registered mortgage was made in 1900, *held*, that the former had priority over the latter, inasmuch as the effect of giving a retrospective effect to S. 50 of the Indian Registration Act, would be prejudicial to the vested rights which the plaintiff had at the date of the passing of that Act. By the repeal of Act XIX of 1843 she had acquired a privilege which she did not possess before, *viz.*, priority for her mortgage over subsequent instruments, whether registered or not registered. **Hargovind v. Kishan Koer**, 3 A.L.J. 320=A.W.N. (1906), 113=28 A. 607.

STANLEY, C.J. and BURKITT, J.

References.—2 M. 147, 20 B. 390, F. and 23 Ch. D. 690, R.

See, also, I, 798, No. 16; and Laches, No. 3.

(27) Ss. 52, 58, 59 and 60.—*Date of registration—time from which period of limitation begins to run for purposes of Art. 10 of the Limitation Act—See Limitation Act, No. 40, 92 P.R. 1906.*

Registration Act (III of 1877).—(Concluded).

(28) S. 58—See LIMITATION ACT, No. 40, 92 P.R. 1906.

(29) S. 59—See LIMITATION ACT, No. 40, 92 P.R. 1906.

(30) S. 60—See LIMITATION ACT, No. 40, 92 P.R. 1906.

(31) S. 77—*Suit to compel registration—Limitation—Act No. XV of 1877 (Indian Limitation Act), Ss. 5 and 6.*

Held, that S. 5 of the Indian Limitation Act, 1877, applies to a suit brought under S. 77 of the Indian Registration Act, 1877, to compel registration of a document. **Sufaj Ball Prasad v. Thomas**, A.W.N. (1905), 175=2 A.L.J. 714=28 A. 48.

BANERJI and RICHARDS, JJ.

Reference.—23 A. 277, F.

(32) S. 77, *decree in a suit under, directing, but not fixing period for, registration of document—(Omission to present document within thirty days of decree, whether could vitiate subsequent registration.*

The defendant, in this case, had obtained a decree, against the present plaintiff, which directed a certain document to be registered by the latter but said nothing about its presentation for registration within thirty days from the passing of the decree. The said defendant did not present the document, for registration, within thirty days after the passing of the first Court's decree, but did so present it within such period after the passing of the decree on an unsuccessful appeal by the present plaintiff and plaintiff, in the present suit, asked for a declaration that the registration was bad. *Held*, there is no positive enactment in S. 77 of the Act that a document directed to be registered, by a decree thereunder, ought to be presented for registration within thirty days after the passing of the decree and though, to give effect to the intention of the section, the decree made under it could have provided that the document should be presented for registration within such period, yet, it was not competent for the Court in the present suit, to go behind the express decree and incorporate into it a condition not imposed by the Court, which passed the same. **Gopinath Adhicary v. Gadadhar Das**, 38 C. 1020.

MACLEAN, C.J., BRETT, J.

(33) S. 77—See No 11, *supra*.

See also, I, 799, No. 19.

(34) S. 87—See Nos. 3 and 21, *supra*.

Registration Regulation (Travancore).

(1) Ss. 10 & 42—*Deed of partition of both movables and immovables, omission to register, effect of, as regards the movables.*

A deed of division, which declares rights in respect both of movables and immovables, included in one list, may, though unregistered, be admitted in evidence so far as regards the movables; and this is especially so where, as, in the present case of a partition-deed between certain co-heirs effecting division among themselves of both movables and immovables, there has not been the possibility of any inseparable connection between the two sets of properties. **Thommen Itilavira v. Harihara Aiyar Narayana Aiyar**, 21 T.L.R. 199.

SADRIVA AIYAR, C.J., & GOVINDA PILLAI and RAMACHANDRA ROW, JJ.

References.—15 M. 336, F. 13 M. 281, not F. 2 B. 373, *Dist.*

(2) S. 42—See No. 1, *supra*.

Registration of Societies Act.

See ACT XXI OF 1860.

Regulation III of 1793 (Bengal).

S. 14—*See I, Hindu Law (Reversioners), No. 16.*

Regulation VIII of 1793 (Bengal).

(1) S. 41—See ACT VI OF 1870 (BENGAL), No. 1, 10 C.W.N. 637.

(2) S. 41—See ACT VI OF 1870 (BENGAL), No. 2, 10 C.W.N. 598.

Regulation XI of 1793 (Bengal).

See I, Hindu Law (Inheritance), No. 1.

Regulation II of 1805.

See I, Regulation II of 1803, No. 1.

Regulation XVII of 1806 (Bengal).

(1) Ss. 7, 8—*Mortgage by way of conditional sale—Foreclosure—Notice.*

When it appeared that, in the notice issued under Ss. 7 and 8 of Regulation XVII of 1806, the year of grace was set down as running from the date of the notice itself, and not from the date of service of notice.

Held that the defect in the notice was fatal (a). **Thakur Das v. Muhammad Bakhsh**, 74 P.L.R. 1906.

JOHNSTONE and RATTIGAN, JJ.

References.—(a) 46 P.R. 1904, 3 C. 397, F. 90 P.R. 1895, R.

Regulation XVII of 1806 (Bengal).—(Concl'd).

(1-a) *Ss. 7 & 8*—Mortgage by way of conditional sale foreclosure of—See **TRANSFER OF PROPERTY Act, No. 105-a, 157 P.L.R. 1906.**

(1-b) *S. 8*—See Nos. 1 & 1-a, *supra*.

(2) *S. 8*—Mortgage by conditional sale—Foreclosure—Parwanah—"Official signature"—*Procedure*.

Held that a *parwanah*, or notification to the mortgagor, issued in a suit for foreclosure of a mortgage by conditional sale under the provisions of section 8 of Regulation XVII of 1806, which bore the seal of the Court and the initials of the Judge of the Court from which it issued, was a good and sufficient notification within the meaning of the Regulation. **Bhaghwat Kuri v. v. Baldeo Rai, A. W. N. (1906), 309.**

STANLEY, C. J. and BURKITT, J.

References:—11 C. 111, D; 16 A. 59, *quoad hoc* overruled.

(8)—See **MORTGAGE (CONDITIONAL SALE), No. 1, 8 C.L.J. 601 (P.C.)**

(4) Mortgage—Conditional sale—Agreement to pay interest annually and in default of payment for six years mortgage to become sale—Applicability of—to such agreement—See **MORTGAGE (CONDITIONAL SALE), No. 2, 50 P. R. 1906.**

(5)—See **MORTGAGE (FORECLOSURE), No. 2, 8 A.L.J. 581.**

Regulation Y of 1312 (Bengal).

S. 3—See **ACT VIII OF 1885 (BENGAL TENANCY), No. 2, 10 C.W.N. 527.**

Regulation II of 1819.

See I, Civil Pro. Code, No. 279.

Regulation VIII of 1819 (Patni).

(1) *Puttah as to patni taluks including jote jamas*—Sale for arrears of rent, inapplicability of the regulation as to.

A *pattah*, by which certain specified Taluks were granted on *patni* tenure by the predecessors-in-title of the present plaintiffs to those of the present defendants, included in it certain *jote jamas* and *takheraj* lands as well and one entire annual amount was reserved as the rent due for the *patni* lands and the *jote jamas* together. *Held*, that inasmuch as, by the above *pattah* on lease, which included *jote jama* and *rent-free* lands, there was no appropriation of what the rent was in respect of the land covered by the *patni* tenure and what the rent

Regulation VIII of 1819 (Patni).—(Continued).

was that was reserved in respect of the *jote jamas*, the settlement cannot be properly regarded as a *putni* tenure within the meaning of the Regulation so as to warrant proceedings of sale for arrears of rent under the same.

Also, where, in point of law the Regulation has no application, the mere fact that the parties have stated that it shall apply cannot render the same applicable. **Hayes & Rudranund Thakur, 88 C. 381.**

MACLEAN, C. J. and GRIDT, J.

(2) *Sale set aside—Rent for period between sale and reversal, patnidar, liable for.*

Where a sale of a *putni* under Reg. VIII of 1819 is subsequently set aside, the zamindar is entitled to rent from the *patnidar* for the period intervening between the sale and its reversal. If the *patnidar* has been dispossessed by the auction purchaser during this period, he will be entitled to mesne profits from the latter. **Amrita Sekhar Banerjee v. Bejoy Chand Mahtab, 4 C.L.J. 547.**

HARINGTON & MOOKERJEE, JJ.

(3)—See **RIGHT OF SUIT, No. 3, 8 C.L.J. 288.**

(4) *S. 3, cl. 3—Act VIII of 1885 (Bengal), S. 3—Rent, meaning of lease, construction of.*

Where by a *putni* lease, the annual *jama* (rent) was fixed at Rs. 6,000 and, besides the said rent, the *putnidar* (lessee) undertook to deposit into the Collectorate the Government Revenue of Rs. 40,156-4-9½ fixed for the share of estate granted in *putni* and payable by the lessor, *kist* by *kist*; failing which, the *putni* lease was to be cancelled and would become null and void and the landlord was to take *khas* possession.

Held, that the payment of the *putnidar* of the Government Revenue, though no doubt was a part of the consideration to be tendered by the lessee for the enjoyment of the tenure, it was not money payable to the landlord and as such was not rent within the meaning of S. 3 of the Bengal Tenancy Act and could not be recovered as rent under the special provisions of the *Putni* Regulation. **Maharaja Bahadur Sir Jotindra Mohan Tagore v. Bihl Jarao Kumari, 8 C.L.J. 7=10 C.W.N. 201=1 M.L.T. 8=88 C. 140 (P.C.).**

LORD MACNAGHTEN, SIR FORD NORTH, SIR ANDREW SCOTLE & SIR ARTHUR WILSON.

Regulation VIII of 1819 (Putni).—(Continued).

(5) *S. 4—Grant of putni of certain mahals as well as of lease of certain jote-lands with in them, at a fixed indivisible rent—Lease.*

Where certain shares in certain mahals were granted in a permanent lease along with certain jote-lands situated in those mahals, by one instrument, which described it as a *putni* settlement, at a rent fixed in a lump, and where, in such a case, there was no appropriation of the rent of the *jote-jamas* as distinguished from that of the *putni taluqs*:

Held, that the settlement created under this lease cannot be regarded as a valid *putni* tenure within the meaning of Regulation VIII of 1819, although the parties may have originally agreed that the Putni Regulation will apply. **Hayes v. Bidyanund Thakur**, 3 C.L.J. 373.

MACLEAN, C.J. and GEIDT, J.

(6) *Ss. 8 and 10—Publication of notice of sale—Form of notice—Order as to lots to be sold.*

This was a suit to set aside a sale for arrears of rent held under Bengal Regulation VIII of 1819. Plaintiff alleged that the sale could not stand by reason of various irregularities in contravention of the rules especially as to the publication of the Zemindar's petition to the Collector and of the notice to the tenants under the 2nd clause of S. 8 of the Regulation. *Held*, the provisions of the Regulation have been seriously disregarded and the irregularities in the case are sufficient to vitiate the sale. The original petition and the original notice ought to have been stuck up and not certified copies of them. The notice must have specified, in order, the lots to be sold and should have throughout remained stuck up until taken down at the time of the sale. **Bojoy Chand Mahatap v. Atulya Charan Bose**, 32 C. 253 = 3 C.L.J. 46.

MACLEAN, C.J. and MITRA, J.

See, also, I, 800 No. 2.

(7) *Section 9—Purchase by one of the defaulters, effect of—Contribution, suit for—Limitation—Limitation Act (XV of 1877), Sch. II, Arts. 61 and 99.*

When, at a sale under Regulation VIII of 1819, a *putni* is purchased by one of the defaulters, there is nothing in the Regulation to make the sale absolutely void, though it is voidable. Payment of any rent for the *putni* by the purchaser, until the sale is set aside, is made on his own account.

Regulation VIII of 1819 (Putni).—(Concluded).

For a suit for contribution for each payment against the former co-owners of the *putni*, the cause of action does not arise and limitation does not begin to run until the sale is set aside. **Natangini Debha v. Prasannamoyee Debha**, 3 C.L.J. 93.

MACLEAN, C.J. and PRATT, J.

(9) *S. 10—See No. 6, supra.*

Regulation VII of 1822 (Bengal).

S. 9—See I, Landlord and Tenant, No. 26.

Regulation XI of 1825 (Bengal).

(1) When Government acquires property under cl. (3) of S. 4 of Regulation XI of 1825, either as an island surrounded by an unfordable channel or as an accession to lands held by Government, it does not become a trustee for the public; it is entitled to deal with the property in the same way as any other part of the territory of the State at its disposal. If it permanently or temporarily settles the estate to which it has thus acquired title, the holder of the settlement is entitled to the benefit of the principle of reformation, and when the question arises between Government itself and a neighbouring riparian owner, Government should not be placed in a worse position than a person who has derived title from it and it is not precluded from claiming the land upon submergence and after re-appearance (a).

No inflexible rule can be laid down as to the manner in which an intention not to abandon submerged lands may be proved, but it would depend upon the circumstances of each particular case.

More submergence of lands in the possession of Government does not operate in law as an abandonment on its part and a reversion thereof to the public territory.

The state of things described in the Thak and Survey Maps cannot be presumed to have existed at the time of the Permanent Settlement.

The question what lands were included in the Permanent Settlement is a question of fact and not of law, which may or may not be satisfactorily proved by subsequent Survey Maps.

The onus of proving that any particular lands were included in the Permanent Settlement of 1793 is clearly on those who affirm that such was the case and the burden of proof is not neces-

Regulation XI of 1825 (Bengal).—(Concl'd).

sarily shifted by the production of the Thak and Survey Maps showing that specific lands are included in a particular estate.

The Thak and Survey Maps are valuable evidence of the state of things at the time they are made, but it does not follow that they show conclusively what was the state of things at the time of the Permanent Settlement (*b*). **Ananda Hari Basak v. Secretary of State for India in Council**, 8 C.L.J. 816

RAMPINI and MOOKERJEE, JJ.

References.—(a) 18 M.I.A. 467; 5 B.L.R. 521; 10 B.L.R. 406, *R.* (b) 90 C. 291, *F.*

(2) S. 4—Right of ryot having no pre-existing right to land, to later accretion to such land—See Act VIII of 1885 (BENGAL TENANCY), No. 9, 38 C. 444.

(8) S. 4—Alluvion—Gradual accession—See ALLUVION, No. 1, A.W.N. (1905), 271.

S. 4 (2)—See *I*, 801, No. 1.

Regulation III of 1872 (Benthal Purgunnahs Usury Laws).

S. 6—See *I*, *Interest*, No. 3.

Regulation I of 1886 (Assam Land Revenue).

(1) Ss. 70, 71—Annulment of incumbrances—*Effect of sale—Part of estate.*

The purchaser of a share of an estate at a sale held under S. 70 of the Assam Land and Revenue Regulation is entitled to hold the property free of all incumbrances. The word 'property' in S. 71 includes not only an entire estate but also a share in an entire estate (*a*).

The purchaser, moreover, is entitled so to hold as soon as his purchase is completed. It is not necessary for him to take any steps to have the property freed from incumbrances.

An incumbrance existing not only upon the part of the estate sold, but also over other parts, is, after the sale, annulled so far as it extends over the part of the estate which has been sold. **Jawad Ali v. Jnanada Sundari Dutt**, 3 C.L.J. 387.

GEIDT and MOOKERJEE, JJ.

Reference.—(a) 26 C. 194, *F.*

(2) S. 71—See No. 1, *supra*.

Ss. 96 to 98, 119, 154 (*Sub-section (1), cl.c.*)—*I*, 802, No. 1.

Regulation II of 1827 (Bombay).

S. 52—See *I*, 803, No. 1.

Regulation XXV of 1832 (Madras).

See *I*, *Hindu Law (Impartible Estate)*, No. 3.

Regulation v. of 1804 (Madras).

See *I*, Act IV of 1899 (*Madras*), No. 1.

Regulation VII of 1817 (Madras).

Cls. 2, 13 and 18—See ACT XX OF 1863 (RELIGIOUS ENDOWMENTS), No. 2, 1 M. L. T. 127.

Regulation XVII of 1806 (Punjab).

S. 8, demand of mortgage money under, whether could be made within period of payment in the deed—See MORTGAGE (FORECLOSURE), No. 3, 119 P. R. 1906.

Relief.

"Such other, as the Court may think fit" meaning of—See MORTGAGE (GENERAL), No. 28, 29 M. 491.

Religious Association.

See *I*, *Small Cause Courts Act, Provincial (IX of 1887)*, No. 7.

Religious Endowments.

(1) *Right of management of Dharmakartas, suit for declaration and injunction regarding, by Vadagalai Dharmakartas against Archakas of Thengalai sect—Processions, ceremonies, etc., to which an idol in a shrine may be entitled, competency of Civil Courts to adjudicate on—Discontinuance by trustees of festivals established by usage, whether can form subject of prescription.*

The *Dharmakartas* of the Sri Devaraja Swami Temple at Conjeevaram who were *Vadagalais* instituted this suit praying for a declaration that, as *Dharmakartas* of the said temple and of the shrine of the *Manavala Mahamuni* situate within its precincts, the rights and duties connected with the management of the temple with its connected shrines and the conduct and celebration of ceremonies and festivals therein inclusive of the annual *Thirunakshatram othsavam* devolved on them alone, that they, as the *Dharmakarthas*, were entitled to make all arrangements for putting and taking down *pandals* in *Manavala Mahamuni's* shrine, that the defendants, who were *Tengalai Archakas* and *Paricharakas* of the above shrine, were not entitled to act independently of the plaintiffs in the matter of such *pandals*, not to carry the idol of *Manavala Mahamuni* in procession either in the *prakaram* of Sri Devaraja Swami or outside the *prakaram* during the *thirunakshatram othsavam* or at any other time. Plaintiffs further prayed for an injunction restraining the defendants from acting independently in the said matters in any way so as to interfere with the plaintiffs' exer-

Religious Endowments.—(Continued).

cise of their right of management and the performance of their duties as *Dharmakartas*.

Held, per MOORE, J., the plaintiffs were admittedly the *Dharmakartas* of the temple and as such the lower Court had rightly granted them the declaration as to their exclusive rights to make all arrangements in respect of *pandals* for the shrine independently of its *Archakas* and *Paricharakas*, the defendants.

As to the further declarations prayed for in the plaint, which related to the carrying of the idol of *Manavala Mahamuni* in procession and which were disallowed by the District Judge, *held*, the District Judge was right in having refused to give any declaration as to the processions. It cannot be maintained for a moment that any Court can adjudicate as to the rights, processions, ceremonies, &c., to which any shrine or idol may be entitled. Further, the question as to the processions in which the idol should be carried and the manner in which such processions should be conducted is not one which can be decided in the present suit between the *Dharmakartas* and certain temple servants the question being one which does not in reality arise between them. The persons mainly interested in these ceremonies are the worshippers at the shrine of *Manavala Mahamuni* and the defendants do not in any way present such worshippers and, whenever the latter feel aggrieved by the manner in which the processions are carried out by the *Dharmakartas*, they have their remedy under Act XX of 1863.

On the contention of the defendants that, being *Tadagalais* themselves, the *Dharmakartas* have, intentionally and in breach of their duty, failed to carry out the established worship of the *Thengalai Manavala Mahamuni* deity, in omitting to carry the idol in procession on specified occasions, *held, per SANKARAN NAIR, J.*, the proper persons to carry out the processions being the *Dharmakartas* themselves, it is very doubtful whether they could contend that, where the procession formed part of the public worship in the temple or was in accordance with established usage, a breach of trust on their part in not carrying out such procession for some time could justify them in really altering the worship. The question in such cases is what is the established usage in the temple, and, in the absence of any such usage, what is the worship described in the *Shastras*. Absence of any procession for a long period of time may be

Religious Endowments.—(Continued).

evidence against such usage or of its discontinuance or cessation if the usage had existed before. But no such discontinuance can be implied where, as in this case, the conduct of the *Dharmakartas* was challenged immediately and whether they can be allowed to set up their own breach of trust for a long time to justify its continuance may well be doubted.

As to the decision of the lower Court that the question as to the procession was *res-judicata* by reason of prior decisions between the *Dharmakartas* and *Archakas*, *held* it was doubtful whether any decision between these two alone could be binding as between the *Tadagalais* or *Thengalais* or any other persons interested as to the form or mode of worship in the temple.

Held, further, that the question whether certain processions had to be carried out in a temple as a part of the worship therein was not a question of a civil, but of a religious, nature, and it has to be decided with reference to considerations and arguments with which our Civil Courts are ordinarily unfit to deal; and a decision, therefore, of such a question by a Civil Court for the purpose of granting any relief can hardly be said to be a decision of a competent Court so as to bind the parties in subsequent suits based on a different cause of action or for a different relief. **Yanamamalai Bhaahyakar v. Krishnaswami Thathachariar**, 16 M.L.J. 150.

MOORE and SANKARAN NAIR, JJ.

(2)—See under ACT XX OF 1863 (RELIGIOUS ENDOWMENTS), No. 1, 8 Bom. L.R. 407.

(3) *Suit on a pro-note by Head of a Mutt—Execution of decree against successor—Sishyas or disciples, position of.*

The decree obtained against the *Pandara-sannidhi* of a *Mutt*, for the money due on a pro-note executed by him, for necessary purposes binding on the *Mutt*, is enforceable against any person, who is the representative of the *Mutt*, at the time of the execution proceedings, subject to his right to set it aside, for adequate reasons, in a properly framed suit.

The *Sishyas* or disciples of the *Mutt* are not co-owners with the Head; nor have they got such interest in the *Mutt* property, as would entitle them to be made defendants in a suit to recover money or property from a *Pandara-*

Religious Endowments.—(Concluded).

sannidhi. **Manikya Yaska Desikar v. Balagopalakrishna Chetty**, 16 M.L.J. 415=39 M. 553.

MOORE AND SANKARAN NAIK, JJ.

References.—27 M. 485, 9 M. 80, 14 B.L.R. 450, R.

(4) *Son of a Hindu Mahant of a, whether entitled to succeed to the office of his father and the property of the institution.*

This was a suit by the son of a *Mahant* of a *dera* or *dharmasala*, for possession of property, alleging that he was entitled to succeed to the same as the rightful heir of his father, and, in the alternative, that, if the property be treated as the property of the religious endowment, he had a superior right of succession thereto. The main question for decision was whether, if the property be that of the religious endowment, plaintiff was entitled to claim possession on the ground of right (1) as son or (2) as the duly elected *Mahant* of the institution, according to the custom among *U'dasi* *fegurs*, to whom the institution belonged. *Held*, among the *U'dasis*, the married *U'dasis* are called *Dindi* while those who remain celibate are called *Nadi* and among the former, the son succeeds and becomes the *Mahant*. Further, even assuming there was no precedent of a son's succession in the particular *dera*, the old rule should be held to prevail, that the election by the fraternity remove such defect, if it is one, in plaintiff's title. **Dasaunahi Ram v. Khazan Dass**, 112 P.R. 1906.

CHATTERJI & KENSINGTON, JJ.

References :—101 P.R. 1905 & 136 P.R. 1889, R.

(5) *Succession to, by chela—Election or nomination to office of Mahant—See CUSTOMS (PECULIAR TO PUNJAB)*, No. 63, 143 P.L.R. 1906.

See, also, I, 804, Nos. 1 and 2; and cases under Hindu Law (Religious Matters) and Debutter Estate.

Religious Endowments Act.

See under Act XX of 1863 (IMPERIAL).

See, also, I, 804-805.

Remand.

(1) *Ex parte* decree set aside and suit remanded by appellate Court to Court of first instance—*Right of successful appellant to restitution—See CIV. PRO. CODE*, No. 4, 3 C.L.J. 181.

Remand.—(Concluded).

(2) *Objection to a—can be taken in regular appeal against final decree, though remand order not specially appealed against—See CIV. PRO. CODE*, No. 297, 32 P.L.R. 1905.

(3) *No separate appeal put in against order of—Right to contest validity of—in appeal against final decree—Right to put in second appeal solely on a ground contesting validity of—See CIVIL PRO. CODE*, No. 296, 9 O.C. 80.

(4) *Order of—of a rent suit under the N.W.P. Tenancy Act, no appeal lies from an—See Act II of 1901 (N.W.P. TENANCY)*, No. 26, 3 A.L.J. 20.

(5)—*without jurisdiction—Appeal from order of—, maintainability of—See CIV. PRO. CODE*, No. 80, 3 A.L.J. 110.

(6) *Effect of by appellate Court under S. 562, C.P. Code, on limitation for execution of lower Court's decree—See LIMITATION ACT*, No. 182, 3 A.L.J. 8

(7)—*under S. 562, Civil Procedure Code, when open to the appellate Court—See CIV. PRO. CODE*, No. 294, 10 C.W.N. 422.

(8) *When an appeal is sent down to a lower Court on remand, and when the records have not been returned to the remanding Court, the latter ought not to dismiss the appeal for default of appearance of parties. See CIV. PRO. CODE*, No. 298, 90 P.L.R. 1906.

(9) *Power of Appellate Court to—on grounds other than those specified in S. 562 Civ. Pro. Code—See CIV. PRO. CODE*, No. 79, 1 M.L.T. 268.

(10) *Appeal from order of—by Collector under S. 562, C. P. C.—See Act XV of 1887 (PUNJAB)*, No. 14, 1 P.R. 1905 (Rev.)

See, also, I, 806; and Act II of 1901 (N.W.P.), No. 13; Civil Pro. Code, Nos. 29, 94, 291, 292, 294, 295, 296, 297 & 298.

Rent.

(1) *Enhancement of, by a Palampatdar—Land Revenue Code (Berar), S. 78 (8), necessity of previous notice to tenant under.*

In the absence of any "express agreement" such as is referred to in sub-section (8) of S. 78 of the Land Revenue Code (Berar), before a *Palampatdar* could enhance the rent payable by his tenant, he is bound to give notice to the latter according to the method laid down by the above sub-section the provisions of which are mandatory.

Rent.—(Concluded).

In the present case which was a suit by such a Superior Holder to collect enhanced rent, admittedly, no such notice had been given to the tenant, and the plaintiff was therefore held not entitled to maintain the suit. *Mingji Parbhaji v. Dattoa alias Santeshray*, 2 N. L. R. 145.

BATTEN, A. S. C.

(2)—payable in kind, legality of attachment proceedings in the case of—See ACT VIII OF 1865 (RENT RECOVERY, MADRAS), No. 12, 29 M. 75.

(3) Apportionment of—Transfer of lessor's interest by operation of law—See TRANSFER OF PROPERTY ACT (IV OF 1882), No. 1, 38 C. 786.

(4) Rate of—decree by a co-sharer-landlord—See EVIDENCE, No. 2, 10 C.W.N. 1084.

(5) Entry in the record-of-rights constituting *prima facie* evidence of—See ACT VIII OF 1865 (BENGAL TENANCY), No. 37, 11 C.W.N. 153.

(6)—for period between sale under *patti* regulation and reversal thereof, liability of *pattidar* to *samindar* for—See REG. VIII OF 1819 (PATNI), No. 2, 4 C.L.J. 547.

(7) A suit on bond undertaking to pay debt due from landlord not a suit for—See SMALL CAUSE COURTS, PROVINCIAL ACT (IX OF 1887), No. 4, 4 C.L.J. 402.

(8) Suit for, by assignee from an unregistered proprietor, whether maintainable—See LAND REGISTRATION ACT (BENGAL), No. 1, 11 C.W.N. 141.

(9) The word—in the Bengal Tenancy Act, whether includes interest—See ACT VIII OF 1865 (BENGAL TENANCY), No. 22, 11 C.W.N. 110.

See, also, I, 807-810; Act VIII of 1865 (Bengal), No. 31; Act XII of 1881 (N.W.P.), No. 6; Civil Pro. Code, No. 61; and Landlord and Tenant, Nos. 9 & 11.

Rent Act (N.W.P.).

See ACT XII OF 1881.

Rent Act (Oudh).

See ACT XXII OF 1886 (OUDH).

Rent Court.

See I, Act XXII of 1886 (Oudh), Nos. 1 and 4.

Rent Recovery Act (Madras).

See ACT VIII OF 1865 (MADRAS).

See, also, I, 810-815.

Rent Suit.

Suit by purchaser of the right to recover arrears of rent against both land-holder (vendor) and tenant—Jurisdiction. See LANDLORD AND TENANT, No. 15, A.W.N. (1906), 304.

Representatives.

Limitation for bringing—of a deceased person on record—See LIMITATION ACT, No. 124, 16 M.L.J. 475.

Re-Sale.

—by Government, of escheated property once finally sold in auction, validity of—See SALE IN AUCTION, No. 1, 21 T.L.R. 215.

Residue.

See I, Hindu Law (Will), No. 5.

Res judicata.

(1) In considering the competency of a Court for the purpose of deciding on a question of *res judicata*, the powers of the Court wherein the suit was instituted and that of the Court that decided the appeal ought to be looked into (a). *Malubhai Ludhabhai v. Sursangji Jalamsangji*, 7 Bom. L.R. 821=30 B. 220.

JENKINS, C.J. and ASTON, J.

References.—(a) 5 C. 332, F. 23 C. 415, R.

(2) For the doctrine of—to operate, the Court in the former suit ought to have had concurrent jurisdiction both as regards pecuniary limit and subject-matter—S. 309, Civ. Pro. Code, inapplicability of, to mortgage suits.

In a suit by a puisne mortgage for sale, brought in a Munsiff's Court for less than Rs. 2,500, the prior mortgagee was made a party defendant under S. 85 of the Transfer of Property Act. The decree was to the effect that, out of the amount to be realised by the sale of the property, the prior mortgagee was to be paid the principal amount due on his mortgage and interest at the contract rate up to the date of the plaint in that suit and at 6 per cent. per annum from that date. The property was not sold in that suit because the decree amount was otherwise paid. The prior mortgagee now used to recover the amount due on his mortgage with interest at the contract rate and,

Res judicata.—(Continued).

the whole amount having exceeded Rs. 2,500, the suit was instituted in the District Court. The District Judge held that the suit, so far as it concerned interest at a rate higher than 6 per cent. per annum, which was the amount awarded in the previous suit, was barred by *res judicata* by reason of the prior decree. *Held*, there was no bar by *res judicata*: *Per SUBRAHMANYA AYYAR, J.*—The doctrine of *res judicata* would not apply because the Munsiff in the previous suit was not a Court of competent jurisdiction to decide the subsequent suit, which was beyond his pecuniary jurisdiction; further, though the subject-matter, *viz.*, the mortgaged property, was the same in both the suits, the matters of relief were different, because, for the doctrine to apply the Court must have had concurrent jurisdiction both as regards the pecuniary limit and the subject-matter (a); on the contention that, when the prior suit was decided, the present plaintiff's claim was limited to an amount below Rs. 2,500, though, by the addition of subsequent interest, it went over Rs. 2,500, *held* that the augmentation of the claim by subsequent interest will prevent the operation of estoppel (b).

Obiter—The awarding of the subsequent interest on plaintiff's mortgage in the previous suit was perhaps in the exercise of the discretion of the Court under S. 209, Civ. Pro. Code, which, however, does not apply to mortgage suits.

Per SANKARAN NAIR, J.—There was no judicial determination in the previous suit that the present plaintiff was only entitled to subsequent interest at 6 per cent. per annum. The rate was fixed as a matter in the discretion of the Court. Further, that rate was recoverable by the present plaintiff only if the property had been sold in execution in that suit. That decision did not prevent the present plaintiff's enforcing his contract rate in a suit of his own. **Giriya Chettiar v. Sabapathy Mudaliar**, 29 M. 65.

SUBRAHMANYA AYYAR, OFFG. C.J. and SANKARAN NAIR, J.

References.—(a) 9 I.A. 197 and 13 I.A. 23 (87), F. (b) 10 C. 607 and 8 M. 88, D.

(3) *First suit by reversioner during life of vendor for declaration dismissed on ground of limitation alone—Second suit after vendor's death calling in question validity of sale not barred.*

Res judicata.—(Continued).

Plaintiffs were reversioners to the estate of a vendor of certain lands. Their suit, during the vendor's life, for a declaration that the sale was not binding on their reversionary rights was dismissed on the sole ground that it was barred by limitation. They now sued, after the death of the vendor, for possession of the land and the point of the validity of the land came into question. *Held*, the former suit having been dismissed on the only ground of limitation, such suit not being necessary and the question of the necessity for the sale and the validity thereof not having been decided therein, the present suit was not barred by the rule of *res judicata*. **Barket Ali v. Hussain Khan**, 6 P. R. 1906 = 61 P.L.R. 1906.

ROBERTSON and RATTIGAN, JJ.

(4) *Suits by tenant to compel tender of pattah and by landlord to compel acceptance of it—Both suits decided against the tenant—Appeal from one of the decisions—The unappealed decision whether res judicata—Civil Procedure Code, S. 13.*

The appellant, a tenant sued the respondents to compel them to grant him a *pattah* and subsequently the respondents instituted a suit against the appellant before the same Revenue Court for compelling him to accept a *pattah* for the same year. The suits were tried together and judgment given on the same day. The decree in each suit ought to have been, in effect, the same but the Court however dismissed the appellant's suit and allowed the landlords' suit brought against him. The tenant appealed to the District Judge against the dismissal of the suit brought by him without any reference to the other decision against him in the landlords' suit. *Held*, on reference to a Full Bench in second appeal—Though, technically, the tenant's appeal ought to have been in both suits and the proper course for the District Judge to have taken would have been to require the appellant to amend his memorandum of appeal so as to make it an appeal in both suits, yet the fact that the tenant appealed in his own suit and did not prefer an appeal in the landlord's suit, did not preclude the District Judge from deciding upon the merits of the questions raised in the appeal, which was before him, because an appellate tribunal cannot be regarded as incompetent to deal with a question, which comes before it on appeal, because an inferior Court, upon the same facts, but in a case other than

Res judicata.—(Continued).

the case under appeal, had given a decision, which had not been appealed against, at the same time as the decision in the case under appeal. **Panchanada Yellan v. Yaithinatha Sastriai**, 16 M.L.J. 63 = 29 M. 833.

WHITE, C.J. and SUBRAHMANYA AYYAR and DAVIES, JJ.

References.—3 C. 30, R. 16 C. 233, F.

(5) *Parties to suit*—Defendant improperly impleaded as a minor—No objection raised by defendant during suit—Subsequent suit for declaration that decree was not binding on defendant—Estoppel.

A certain defendant was impleaded in a suit as a minor under the guardianship of his mother, who was his certificated guardian. He and his mother, jointly defended the suit, and, at no period, did the defendant raise the objection that he was not a minor when the suit was instituted. A decree was passed in favour of the plaintiff and no appeal was preferred either by the defendant or his guardian *ad litem*. *Held*, that it was not competent to the defendant to sue subsequently, to have the decree declared not binding upon him, upon the ground that he was, in fact, of full age when it was instituted and that his mother had betrayed his interests. **Ganga Ram v. Mihin Lal**, A.W. N. (1906), 73 = 8 A.L.J. 187 = 28 A. 416.

KNOX and AIKMAN, JJ.

References.—20 A. 90 and A.W.N. (1905), 229, D.

(6) *Execution of decree*—Decision of objections raised by judgment-debtor.

In answer to an application for execution of a simple money decree, obtained against her deceased husband, the widow objected that the property sought to be taken in execution was in her possession by consent of the heirs of her husband in lieu of dower; but this objection was not pressed, and was disallowed, and no appeal was preferred from the order disallowing it. *Held*, that the same objection could not be raised again at a subsequent stage of the execution of the same decree. **Abadi Begam v. Abdul Ghaifar**, A.W.N. (1906), 70 = 3 A.L.J. 198.

KNOX and AIKMAN, JJ.

References.—24 A. 232, F., and 12 A.W.N. 288, D.

(7) *Act IV of 1882 (Transfer of Property Act)*, Ss. 90, 100—Suit to enforce vendor's lien by

Res judicata.—(Continued).

sale—Determination in that suit of vendee's personal liability—Application for decree over under S. 90.

In a suit for enforcement of a vendor's lien by sale of the property, the Court further decided that "the defendants cannot, either personally or their other properties, be held liable for any part of the amount claimed. The property sold to them can alone be liable." Subsequently, the plaintiffs applied for a personal decree under S. 90 of the Transfer of Property Act, 1882. *Held*, that it was within the competence of the Court to determine the personal liability or otherwise of the defendants—if not, at that stage, to pass any decree under S. 90—and that the matter so determined was *res judicata* in respect of their subsequent application (a) and it was none the less *res judicata* because the finding as to the personal liability of the defendants was not embodied in the decree (b). **Uttam Ishlok Rai v. Ram Narain Rai**, A.W.N. (1906), 44 = 8 A. L. 171 = 28 A. 365.

STANLEY, C.J. and BURKITT, J.

References.—(a) 14 A. 523, 11 A. 486 and 13 A. 356 and A. W. N. (1893), 142, R. (b) 7 A. 606, R.

(8) *Mortgagor's suit for possession of mortgaged property against trespasser after dismissal of similar suit by mortgagee in default*—Waste land, presumption as to possession of.

The mortgagee of a village let some waste land to A to have it reclaimed and brought under cultivation. The defendants interfered with A and the mortgagee brought a suit for possession in which the mortgagor was impleaded as a defendant. The suit was dismissed on the mortgagee failing to put in an appearance. Subsequently the mortgagor brought a suit for possession of the waste land against the defendants. *Held*, that the decision in the former suit did not render the question *res judicata*.

Held, further, that the mortgagor being in rent-collecting possession of the village must be presumed, in the absence of any evidence to the contrary, to be in possession of the waste land therein (a). **Sheik Muhammad Alam v. Ragbir Singh**, 9 O. C. 32.

CHAMIER, J.C.

Reference :—(a) 8 O. C. 177, F.

(9) *in execution proceedings*—Dismissal of judgment-debtor's objection on a former occasion without investigation, effect of.

Res judicata.—(Continued).

The dismissal of an objection by the judgment-debtor to the execution of a decree on the ground of limitation cannot rightly be held to operate as a bar to its being urged when the decree-holder applies for execution again, when the previous objection was struck off without any judicial determination. *Hira Lal Bose v. Dwija Charan Bose*, 3 C.L.J. 240=10 C.W.N. 209.

RAMPINI and MOOKERJEE, JJ.

References.—A.W.N. (1896), 96; 28 C. 122 and 6 A. 260=11 I.A. 37, R. 8 C. 51=8 I.A. 123 (P.G.) and 24 A. 262, D.

(10)—*C. P. Code, S. 13—Jurisdiction of Civil and Revenue Courts—Suits for profits in Revenue Court—Previous suit between the parties—Question of title decided adversely to the present plaintiff.*

M sued for profits due to her as owner of a share in the *mahal* of which D was the *lambardar*. In a suit between the parties, it had been decided by a Civil Court of competent jurisdiction that M had no title to the share in question. D pleaded that M was not the owner, and the question of ownership was *res judicata*. The Dt. Judge overruled the plea and decreed the claim, holding that the decision of the Civil Court in the previous suit could not operate as *res judicata* inasmuch as that Court could not have tried the present suit for profits.

Held, that, when as between parties to the revenue suit, a Civil Court of competent jurisdiction has decided the title to the property adversely to the plaintiff, who claims profits, the Revenue Court is not competent to ignore that decision, and that decision being binding upon the Revenue Court, M's suit should be dismissed. *Durga Shankar v. Gur Charan*, 2 A.L.J. 384=A.W.N. (1906), 1.

KNOX and AIKMAN, JJ.

Reference.—22 A. 1 (F.B.), *Itcd.* to.

(11) *Decision as to point pleaded by one defendant and supported by another defendant to be res judicata between them.*

The plaintiff, S, brought a suit against the defendant, C, for possession of a deceased Hindu's property on the ground that he became entitled to it by survivorship. The defendant, besides pleading adoption, custom, &c., also pleaded that, if his adoption was invalid, it was not the plaintiff but one R who was entitled to the pro-

perty by right of inheritance. In consequence of this last plea, it would appear, R instituted a suit for possession of the property. The Subordinate Judge then made R a defendant to the plaintiff, S's suit, and S a defendant to her suit. In the suit of R, it was pleaded by the present defendant, C, that R had a better right than the present plaintiff, S. The Subordinate Judge held that R had no title as against the plaintiff, S, and accordingly decreed to claim of S and dismissed that of R who did not appeal. The defendant C appealed, making the plaintiff, S, alone a respondent.

Held, that the question whether it was R or the plaintiff, S, who had a better title was *res judicata* between the plaintiff and R as well as between the plaintiff and the defendant, C. *Chunni Lal v. Srinandir Das*, 9 O.C. 126 (B).

CHAMBER and WELLS, J. CS.

(12) *Land Acquisition Act (I of 1894), decision as to person entitled to compensation in proceedings under, effect of.*

The question, in this case, was with reference to the binding nature of a decision as to the rights of persons, who claimed compensation in a previous proceeding under the Land Acquisition Act, conducted on a reference made by the Collector owing to disputes between the said persons. *Held*, that an adjudication as to the right of persons claiming the compensation in accordance with the provisions of the Land Acquisition Act (X of 1870), concluded the question between the same parties was decided by the Judicial Committee and there is nothing in the present Act (I of 1894) to warrant its being held differently in regard to similar adjudications made under it (a). *Chowakaran Makli v. Yayapparath Kunhi Kutti Ali*, 29 M. 173.

SUBRAHMANYA ATYAR, OFFG. C.J. and BODDAM, J.

Reference.—(a) 20 M. 69, D.

(13) *Civ. Pro. Code S. 13—Consent decree—Bond payable by instalments—Fraud—Defence—Limitation.*

The defendant signed on the 4th June, 1893, a *rasu* acknowledging Rs. 11,534-15-0 to be due by him to the plaintiff's firm. On the 10th June, 1894, he paid Rs. 400 cash and a *Hundi*, for Rs. 600 and, for the balance of Rs. 10,534-15-0, passed an instalment bond payable by yearly instalments of Rs. 1,000 each.

Res judicata.—(Continued).

The *Hundi* having been dishonoured, the plaintiff's firm brought suit No. 249 of 1895 to recover the amount of the *Hundi* from the defendant. The latter pleaded want of consideration and impeached the correctness of the accounts. The Court appointed a Commissioner to examine the plaintiff's accounts: and the Commissioner reported that the debt due was Rs. 3,016-8-0 and not Rs. 11,584-15-0 as stated in the *rusu*. Upon this, the Court without going into other questions, raised by the defence, decreed the claim.

In 1897, the first two instalments under the bond having become due, the firm sued the defendant (Suit No. 105 of 1897) to recover Rs. 2,000. The defendant admitted the claim, and the suit ended in a consent decree.

The defendant then instituted Suit No. 412 of 1898 against the firm for cancellation of the instalment bond, alleging that it was obtained by misrepresentation and fraud, and was void in law and passed in respect of wagering transactions and nothing was due under it. This litigation went up to the High Court, which without giving any decision on the merits, dismissed the suit as time-barred.

In 1902, the plaintiff sued to recover the 3rd, 4th and 5th instalments under the bond. The defendant pleaded that the bond and prior *rusu* were obtained from him by fraud and misrepresentation and that the debt due was one arising from wagering contract unenforceable by law. The Subordinate Judge held that the defendant was barred by the decrees in Suits Nos. 249 of 1895 and 105 of 1897 from raising any of his contentions, and passed a decree in plaintiff's favour. On appeal, the District Judge held that the defendant was barred by *res judicata* from pleading that the bond was voidable for fraud or from pleading that the bond was void by reason of its consideration being a wagering debt.

On appeal to the High Court:—

Held, by ASTON, J., that, unless it be established that the plea which the defendant had raised in the present suit and had not been allowed to prove, would, if proved, in the *Hundi* Suit No. 249 of 1895, have reduced the amount actually due by him in June, 1898, to less than Rs. 600, plus the Rs. 400 paid in cash, the decision in the *Hundi* suit could not operate as *res judicata* in respect of the said plea, for the matter which might and ought to be

Res judicata.—(Continued).

made a ground of defence in the *Hundi* suit must be a ground of defence to "the claim actually made" in the said former suit;

(3) that the plea, that the consideration for the instalment bond partly failed because of the reasons set up in the pleas aforesaid, would have been irrelevant in Suit No. 105 of 1897, unless, by setting up these pleas and proving them, the claim in the latter suit for Rs. 2,000 would have been reduced.

Held, by SCOTT, J., that, before the present suit was brought, the issue as to consideration had not been raised except with reference to the *Hundi* and had been heard and determined in Suit No. 249 of 1895 with reference to that document alone. The defendant was, therefore not barred by *res judicata* from pleading in this suit that the bond was no longer supported by consideration;

(2) that the lower Court was wrong in holding that the defendant was barred, by S. 13 of the Civ. Pro. Code, from raising the questions of fraud or wager as vitiating the bond as a security for the payment of the remaining instalments. The issue in suit No. 249 of 1895 was a sufficient issue for the disposal of the case on the *Hundi* and in that suit the defendant's liability under the *Hundi* was the only matter in issue; in suit No. 105 of 1897, there was no hearing and disposal of any matter in issue: the provisions of S. 13 did not, therefore, apply;

(3) that the fact that the defendant was, owing to the bar of limitation only, denied the specific relief of cancellation claimed in suit No. 412 of 1898, could not prevent him from raising defences on the merits as a defendant in this suit. *Minalal Shadiram v. Kharsetji Jiwaji & Kharsetji Jiwaji v. Minalal Shadiram*, 8 Bom. L. R. 296 = 30 B. 805.

ASTON and SCOTT, JJ.

References — 6 Bom. L. R. 592, F., and 7 Bom. L. R. 778, not F.

(14) Civ. Pro. Code (Act XIV of 1882), S. 13—Suit instituted before Munsiff—Compromise-decree on appeal before District Judge—Application for review to have compromise-decree set aside—Decision if bars for suit before Subordinate Judge—Ground for setting aside compromise-decree not raised in review—Fresh suit on such ground, if lies—Procedure for setting

Res judicata.—(Continued).

aside decree—Rule issued by the High Court—Discharge—Effect.

Plaintiffs had instituted three suits against the defendants in the Court of the Munsiff. Pending appeals preferred before the District Judge against the decrees of the Munsiff, a compromise was filed and decrees made thereon. The plaintiffs then applied for review of the decrees alleging that their pleader had no authority to agree to the compromise. The District Judge rejected the application on the ground that the pleader had the requisite authority. The plaintiffs obtained rules from the High Court against this order but they were discharged. Plaintiffs now instituted a fresh suit in the Court of the Subordinate Judge praying that the compromise and the decree made thereon be set aside on the ground that the pleader had no authority to compromise and that the terms of the compromise went outside the subject-matter of the suit.

Held, that, in order to have the compromise-decree set aside, it was open to the plaintiffs to proceed either by way of suit or by an application for review, the latter being the more regular mode of procedure (a).

That the effect of the discharge of the rules issued by the High Court was to leave the order of the District Judge undisturbed ;

that the question regarding the pleader's authority to compromise was directly and substantially in issue in the proceeding for review and was heard and finally decided by the Court of the District Judge, which was a Court of jurisdiction competent to try the present suit. This suit in consequence is barred by the rules of *res judicata* (b).

An independent suit would not lie merely because a ground is alleged for setting aside the decree which was not taken in the application for review. The plaintiffs having elected to proceed by way of review, ought to have raised upon their application all the grounds upon which they relied for setting aside the decree. **Ram Gopal Mazumdar v. Prasanna Kumar Sanial**, 10 C.W.N. 529.

MACLEAN, C.J. and CASPERZ, J.

References.—(a) 10 C. 612, F. (b) 25 C. 571, 28 C. 78, relied on.

(15) *Civ. Pro. Code (Act XIV of 1882), S. 13*
—Joint Hindu family—Suit by one member for redemption—Second suit by other members.

Res judicata.—(Continued).

The sons in a joint Hindu family governed by the *Mitakshara* become, by birth and in their own right, entitled to the family property. They can enforce this right against their father and do not claim under him within the meaning of S. 18, Civ. Pro. Code. A person is said to claim under another, when he derives his title through that other, by assignment or otherwise (a).

Hence, where, in a previous suit for redemption brought by the father, the sons were not arrayed as parties, a second suit, by the sons, for the redemption of their shares in the property, would not be barred. **Sundar Lal v. Chhitar Mal**, 8 A.L.J. 644 = A.W.N. (1906), 242.

STANLEY, C.J. and KNOX, J.

Reference.—(a) 10 A. 411, P.

(16) *Personal decree with a decree for sale—Application for personal decree dismissed—Execution of original decree against person.*

Where a combined decree under Ss. 88 and 90 of the Transfer of Property Act has been passed, it is not necessary to apply for a personal decree, after the sale of the hypothecated property. If such an application is made, any order passed on that is without jurisdiction and cannot supersede the decree as originally made and cannot operate as a bar to the decree being executed. **Sadho Singh v. Maharaja Parbhu Narain Singh**, 8 A. L. J. 606 = A.W.N. (1906), 251.

BANERJI and AIRMAN, JJ.

(17) *Suit for profits—previous suit for same period dismissed as defendant not served—effect of such dismissal.*

Where a suit for profits against three defendants was dismissed owing to a failure of the plaintiff to cause one of the defendants to be served, *held* that a second suit for profits, for the same period, against the same defendants, was maintainable. The former judgment, not being a decision on the merits, did not bar the subsequent claim. The principles embodied in S. 90 (A) of the Civ. Pro. Code applied to a case like this. **Sita Ram Singh v. Pokhpal Singh**, 8 A.L.J. 576 (F.B.) = A.W.N. (1906), 238 = 1 M. L.T. 447 = 28 A. 749.

STANLEY, C.J., KNOX and AIRMAN, JJ.

(18) *Mortgage—First suit by second mortgagee for sale—Discharge of first mortgage by second mortgagee under his decree—*

Res judicata.—(Continued).

Second suit by second mortgagee to sell property mortgaged to first mortgagee—Civ. Pro. Code, Ss. 13, explanation II.

When a second mortgagee sued for sale of property mortgaged to him and offered, and was allowed by the decree, to redeem a prior mortgage, and realised his mortgage money by sale of the property mortgaged to him, held that a second suit by him, to sell the rest of the property under the first mortgage, which was discharged by him, was not barred by the rule of *res judicata* as laid down in explanation II of S. 13 of the Civ. Pro. Code. **Ajudhia Prasad v. Har Dayal**, 3 A.L.J. 541 = A.W.N. (1906), 249.

AIKMAN, J.

(19) *Civ. Pro. Code, S. 13, Expl. II*—*Matter which ought to have been made ground of defence or attack*—*Different suits on different causes of action with regard to the same subject-matter*—*Questions to be decided in execution*—Civ. Pro. Code, S. 244.

R purchased a certain property in execution of a mortgage-decree against the mother of D and B. Subsequently, the same property was again sold in execution of a decree for rent obtained by the landlord against the recorded tenant (father of D and B), and was purchased by R in the *benami* of his son-in-law, and he took possession in execution of both the decrees. D and B then instituted two suits for recovery of possession. One was on the ground that the rent-decree, being fraudulent, was inoperative against them; and the other on a declaration that the mortgage executed by their mother was without legal necessity and that the sale in execution of the mortgage decree was not binding on them. The first suit was decreed and the second suit dismissed. D and B then transferred their right to possession under the decree in the first suit to the present defendant, who recovered possession in execution. An objection on behalf of R that he was in possession under the purchase in execution of the mortgage-decree was disallowed.

R then brought the present suit for recovery of possession on the ground of his purchase in execution of the mortgage-decree.

Held, that the suit was not barred either under S. 13 or under S. 244 of the Code.

Where a plaintiff brings two suits based on different causes of action with regard to the same property, it is not obligatory on a person

Res judicata.—(Continued).

who is a defendant in both the suits, to plead as a defence to each suit what is properly a defence to the other. **Kallash Chandra Mandal v. Ram Narain Giri**, 4 C.L.J. 211.

GHOSE, AG. C.J. and CAMPBELL, J.

(20) *Civ. Pro. Code, S. 13*—*Two suits decided by same judgment*—*Appeal in one suit, if barred by decision in the other suit*—"Former suit," *what is*—*Hearing two suits together*—*Irregularity*.

A Mahomedan died leaving two widows. Each of them brought a suit, for the recovery of her dower, from the estate of the husband, making the other a party defendant. One of the widows, M, having claimed certain houses to be her exclusive property, and the other, J, denying it, an issue was raised in each of the suits as to whether those houses belonged to the estate of the husband, so as to be liable for the dowers claimed, or, were the separate property of M. The two suits were, with the consent of the parties, tried together and decided by one and the same judgment, though two separate decrees were made, the Court holding that the houses were M's property. J appealed only from the decree in her suit, and it was contended on behalf of M, that the judgment in her suit, not having been appealed from, became final, and was a bar to the trial of the issue as to the ownership of the houses in the appeal preferred by J, in her suit.

Held, per GHOSE, C.J., agreeing with HARRINGTON, J. (RAMPINI, J., *contra*). That there was no separate judgment in M's suit to operate as a bar by way of *res judicata* to the trial of the appeal in J's suit (a).

The two suits ought not to have been heard together.

The proper procedure indicated. **Mariamnessa Bibee v. Joynab Bibee**, 10 C.W.N. 994 — 4 C.L.J. 149 — 33 C. 1101.

GHOSE, C.J., and RAMPINI and HARRINGTON, JJ.

References.—(a) 16 C. 233, *relied on*; 11 A. 148 and 24 M. 350, R.

(21) *Civ. Pro. Code, S. 13, exp. III*—*Suit for mesne profits accruing due during pendency of suit for possession*.

Suit for mesne profits. In a previous suit for possession, plaintiff had asked for mesne profits from date of suit to date of possession. The Court awarded possession, though the decree

Res judicata.—(Continued).

was silent as to the meane profits claimed. *Held*, the omission in the previous suit, to grant meane profits did not debar the present claim therefor as *res judicata*, because, the grant of meane profits pending suit was discretionary with the Court, under S. 211, Civ. Pro. Code, and S. 18. Exp. III is not applicable to such a case. **Bapuji Kale v. Yagosa Laid**, 2 N.L.R. 91.

BATTEN, A.J.C.

References.—21 A. 425 and 32 C. 115, *F.*

(22) *First suit on lease—Second on title.*

First suit was for possession by a lessor against a lessee. Second suit for possession on the basis of the plaintiff's title. In the first suit, the title had not been adjudicated upon. *Held*, the second suit was not barred by the first, because, the title had not been adjudicated upon in the first suit. Nor could explanation II of S. 18. Civ. Pro. Code, bar the suit as *res judicata*, because, it could not be said that the plaintiff ought to have put forward his title in the previous suit, in which the cause of action was the lease and the holding over by the defendant after its expiry, and plaintiff expressly limited his claim in that suit to the cause of action given him by the lease. **Gopala v. Anla**, 2 N.L.R. 94.

BATTEN, A.C.J.

References.—26 M. 760, 27 M. 102, 28 M. 406, *F.* 6 Bom. L.R. 594, *Distd.*

(23) *Decision in previous suit for possession, holding plaintiff's right barred by reason of an agreement—Whether res judicata in a subsequent suit, after bar of the agreement by time.*

The present suit for possession was on a cause of action identical with that of, and between parties virtually the same as those in, a prior suit, in which, it had been held that the plaintiff was not entitled to possession, by reason of an agreement to sell in favour of the defendant. The Subordinate Judge dismissed the present suit as *res judicata* by reason of the prior decision, but the District Judge held that the plea of *res judicata* was not sustainable. Setting aside the decree of the District Judge *held* the fact that the agreement to sell in favour of defendant was enforceable by him, at the time of the prior suit, but had become barred by time, at the time of the subsequent suit, could not prevent the operation of the bar by *res judica*.

Res judicata.—(Continued).

ta. Adakkalam Chettiar v. Ramalinga Chettiar, 29 M. 820.

MOORE and SANKARAN NAIR, JJ.

(24) *Suit against widow for setting aside gift by her—Subsequent suit against her daughters for possession, subject matter of, neither in issue nor heard and decided in previous suit—Civil Procedure Code, S. 18, explanation II.*

Plaintiffs, who were the collaterals and reversioners of one B, deceased, had sued his widow M to set aside a gift of B's estate made by her. Subsequently, the widow having died, the present suit, for possession of the property, was instituted by them against the two daughters of B and certain co-reversioners with them. The daughters pleaded that the plaintiffs had not a superior right to succeed, but their contention was overruled by the lower Courts as barred under S. 18, Civil Procedure Code, explanation II, on the ground that, although the daughters were not parties to the previous litigation, the entire estate was represented by their mother through whom they claimed and they were therefore bound by the prior decision that the plaintiffs were the reversionary heirs. *Held*, because the question as to who had the superior claim, was not a necessary issue in the previous declaratory suit and had not been therefore adjudicated upon, the matter could not be held as having been heard and finally decided within the meaning of S. 18, Civ. Pro. Code, and the daughters were not barred from setting up the above defence, by reason of the decision in the prior suit. **Bhari v. Pir Bakshah**, 107 P.R. 1906.

KENSINGTON and LAL CHAND, JJ.

References.—24 C. 711 and 28 C. 17, *F.* 29 P.R. 1895 and 11 C. 196, *D.*

(25) *Plaintiff no party to the previous case—Decision in the previous case obtained against the widow, how far binding on the plaintiff—Adopted son—Misjoinder.*

In 1898, R and B, fathers of the present defendants, J and G, alleging themselves to be the nearest reversionary heirs of one R. S., instituted two suits for a declaration that R. S. had died intestate and that his widow had only the estate of a Hindu widow in his property. Their cause of action was that the widow had propounded a will alleged to have been executed by her husband in 1890 whereby, if genuine,

Res judicata.—(Continued).

they were excluded from all chance of inheriting the property. The widow abandoned that will but set up a will of 1876 in pursuance of which she had adopted the present plaintiff-appellant. The present defendants refused to make him a party to the suit. It was decided in that case that the will propounded by the widow was not proved and that the adoption, although true in fact, was invalid in law. The plaintiff then brought this suit claiming the entire property left by R. S. as his adopted son and impleading all persons in possession of the property as defendants. The defendants pleaded the previous decision as *res judicata* on the question of plaintiff's adoption. They also pleaded misjoinder of parties and causes of action.

Held, that the previous decision was not *res judicata*. The widow did not conduct the previous suit for the benefit of the plaintiff inasmuch as she set up an agreement with the plaintiff's father that he should not be entitled to possession of the estate till her death, and pleaded in effect that she had full proprietary rights even after the adoption. It was clear that in the previous suit although she did all in her power to make out title for the present plaintiff which would exclude the defendants, she was determined to make it clear that she had lost nothing by the adoption. Therefore, under these circumstances, it could not be assumed as a matter of law that she had defended the suit as guardian of the present plaintiff and the judgment passed in the previous suit, as to the adoption, was not binding on the plaintiff.

Held, further, that there was no misjoinder. The plaintiff's right to sue for the whole estate in one suit was not affected by the passing of the estate into the hands of other trespassers, and the plaintiff was not bound to trace the property to the different defendants; it was sufficient for him to show a complete cause of action after the adoption and then say that the defendants were in possession of the property (a). **Radha Kishen v. Jamuna Parshad**, 9 O.C. 389.

CHAMBER and GRIFFIN, J.CS.

References.—(a) 32 I.A. 239, 3 M.I.A. 229, 16 C. 40, 7 M.H.C.R. 260, 24 C. 831, 25 M. 786, 27 M. 94, 9 M.I.A. 589, 11 C. 186, 6 O.C. 379, 7 M.H.C.R. 290, 29 C. 871, 28 B. 266, 16 A. 279 and 6 C.W.N. 535, R.

Res judicata.—(Continued).

(26) *Adjudication between two persons in a former suit, whether res judicata in a subsequent suit between one of them and the successor in title of the other.*

An adjudication, in a former suit, between two co-defendants, that one of them acquired a title by adverse possession, is *res judicata* in a subsequent suit between one of them and the successor in title of the other. **Kandiyil Chirya Chandu v. The Zamorin of Calicut**, 29. M. 515.

BENSON and BHASHYAM ATYANGAR, JJ.

References.—15 M. 264 & 22 M. 828, F., 18 M. 374, D.

(27) *Decree against Karnavan, whether Res judicata against the Anandravars and when could be set aside by them.*

Notwithstanding decisions to the effect that a decree against a *Karnavan* is *Res judicata* against the *Anandravars* also, and can be set aside only on proof of fraud or collusion, a separate suit has always been held maintainable by the latter impeaching the decree on the ground that the debt was not contracted by the *Karnavan* for *Tarwad* purposes. So, where, either there has been fraud or collusion or treachery on the part of the *Karnavan* or the Court has been cheated into the belief that the *Karnavan* had defended the former suit on his debt, properly, whereas he could not have himself very well defended the same on behalf of the *Tarwad*, the *Tarwad*, must be considered not to have been properly represented in the prior suit and should, therefore, be given an opportunity, in a fresh suit, of proving that the debt either did not exist or was not such as to be binding upon the *Tarwad*. **Mundan Raman v. Ramasubba Aiyar Kulathoor Aiyar**, 21 T.L.R. 41.

SADASIVA AIYAR, C.J., PADMANABHA AIYAR and RAMACHANDRA ROW, JJ.

Reference.—L.R. 3 C.H.D. 61, R.

(27-a) *Prior suit for recovering value of crops on land, decision of issue as to title to land in, whether bars by res judicata, subsequent suit for declaration of title to same land.*

Where, on a suit for declaration of the plaintiff's title to, and recovery of the possession of, certain lands, it appeared that in a prior suit that had been brought by the present plaintiff for recovering crops, then alleged to have been carried away by the present defendant, the

Res judicata.—(Continued).

latter had disputed both the title and the possession of the plaintiff, in respect of land and the question of title now raised in the present suit had, therefore, been directly and substantially in issue and had been decided against the plaintiff in the prior suit, it was held that the previous finding regarding plaintiff's title was binding by way of *res judicata* in the present suit, brought by him, with regard to his title to the same land. **Mathavan Kañli v. Sankaran Kunchiyan**, 21 T.L.R. 127.

PADMANABHA AIYAR & EAPEN, JJ.

References: 21 C. 430, 25 C. 136 & 11 T.L.R. 112, *F.* 24 C. 569 & 26 C. 428, *D.* 9 T.L.R. 129, *Expi.*

(28) Dismissal of a previous suit for redemption of a mortgage.—Subsequent suit for redemption of the same properties based on a different mortgage whether barred by—See CIV. PRO. CODE, No. 18, 16 M.L.J. 48.

(29) Whether decision in a previous original suit of a small cause nature in which no second appeal lay would be—In respect of the same matter in a subsequent suit in which second appeal is competent—See CIV. PRO. CODE, No. 10, 1 M.L.J. 25 = 16 M.L.J. 41.

(30) Dismissal of a petition of objection under S. 104 E of the Bengal Tenancy Act, does not bar subsequent suit for rent by objector—See ACT VIII OF 1885 (BENGAL TENANCY), No. 39, 3 C.L.J. 133.

(31) Failure of judgment-debtor's representative to take objection in execution that property attached was trust property in his hands, no bar to his raising the same point as a defence in a suit by auction-purchaser for possession—See CIV. PRO. CODE, No. 21, A.W.N. (1906), 158.

(32) Rent suit, adjudication upon title to land in a, when—in a subsequent suit on title—See CIV. PRO. CODE, No. 13, 10 C.W.N. 820.

(33) Operation of—preventing a judgment-debtor from pleading bar by limitation in respect of a previous application ordered without objection—See CIV. PRO. CODE, No. 224, 47 P.R. 1906.

(34)—See CIV. PRO. CODE, No. 305, 9 O.C. 254.

(35) Effect of a decision erroneous in point of law—See CIV. PRO. CODE, No. 15, 9 O.C. 243 (B.)

Res judicata.—(Concluded).

(36)—See LIMITATION ACT, No. 76, 29 M. 353.

(37) Money-decree given in a suit on a mortgage—Relief prayed for but not granted—Second suit for same—See CIV. PRO. CODE, No. 14, 88 C. 849.

(38) Decision of issue improperly raised after remand—See LIMITATION ACT, No. 1, 10 C.W. N. 1065.

(39) First suit for partition—Appointment of Amin to effect partition—Execution proceedings struck off for non-appearance of parties—Second suit for partition, whether maintainable—See CIV. PRO. CODE, No. 20, 10 C.W.N. 839.

(40) Constructive, second application for grant of probate of a will not barred by—See CIV. PRO. CODE, No. 19, 4 C.L.J. 492.

(41) Erroneous opinion on a point of law how far conclusive—See CIV. PRO. CODE, No. 17, 8 Bom L.R. 932.

(42) Unsustainability of plea of—in the absence of previous proceedings in evidence—See MAHOMEDAN LAW (WILL), No. 2, 9 C.W.N. 938 (P.C.)

(43) To maintain the plea of—it must appear from inspection of the record that the person, whose interest is sought to bind, was, in some way, a party to the suit. A mere intimation on the part of one of the parties that it should be for his benefit is not enough to support the plea—See CIV. PRO. CODE, No. 9, 7 Bom. L.R. 112 = 2 C.L.J. 413 (P.C.).

See, also, I, 815-831; Act XII of 1881 (N.W.P.), No. 5; Act VIII of 1885 (Bengal), No. 31; Civil. Pro. Code, Nos. 14, 15, 18, 23, 29, 31, 32, 32-a, 92, 170, 216 and 233; Custom (Punjab), No. 33; Decree, No. 27; Evidence Act, No. 36; Execution of Decree, Nos. 59, 60 and 83; Hindu Law (Reversioners), No. 17; Limitation Act, No. 78; Mortgage (Redemption), Nos. 14, 26; Re-emption, No. 42; and Rent, No. 8.

Restitution.

(1) *Ex parte* decree set aside on appeal and suit remanded—Right of successful appellant to—See CIV. PRO. CODE, No. 4, 8 C.L.J. 181.

(2) Right to—under S. 588, Civ. Pro. Code, when applicant, being originally deprived of

Restitution.—(Concluded).

his property in an appeal before the High Court; is given the property on review—See CIV. PRO. CODE, No. 126, A.W.N (1906), 171.

(3)—of possession of property by Court under order of appellate Court setting aside dismissal of objection to sale—See CIV. PRO. CODE, No. 180, 9 O.C. 101.

(4) Right to—of assignee of decree of appellate Court—See CIV. PRO. CODE, No. 307, 33 C. 857.

See, also, I, *Civil Pro. Code Nos. 98, 119 and 302; and Execution of Decree, Nos. 16 and 63.*

Restitution of Conjugal Rights.

(1) *Conjugal rights, suit for restitution of—Prompt dower, necessity for payment or tender of.*

Held that where some of the dower must, in the absence of specification, be taken to be prompt, a suit by the husband for restitution of conjugal rights will not lie until so much of the dower as is prompt has been paid or tendered.

Abdul Karim Khan v. Musammam Chhoti, A.W.N. (1906), 136—3 A.L.J. 432.

BANERJI, J.

Reference.—2 A. 831, F.

(2) Suit for—by Mahomedan husband—Conditions in *Kabinnama* emanating from the husband, validity of—See MAHOMEDAN LAW (DIVORCE), No. 2, 3 C.L.J. 49.

(3) Suit for—Valuation of suit—Jurisdiction—See ACT VII OF 1887 (SUITS VALUATION), No. 3, 3 A.L.J. 266.

(4) Conversion of wife dissolves marriage—Effect of conversion on decree for restitution passed prior to conversion—See MAHOMEDAN LAW (MARRIAGE), No. 2, 148 P.L.R. 1906.

See, also, I, *Hindu Law (Restitution of Conjugal Rights), and Mahomedan Law (Restitution of Conjugal Rights).*

Resulting Trusts.

Applicability of S. 10 of the Limitation Act to—See LIMITATION ACT, No. 18, 8 Bom. L.R. 328.

Resumption.

(1)—of land with buildings thereon—Notice—payment of compensation—Land in cantonment—Resumption—Government.

In 1862, E, the predecessor in title of the defendants, obtained from the Government the

Resumption.—(Continued).

land in dispute, under a grant which was made on the terms of the General Order of 31st July, 1856. The General Order provided among other things:—

“Permission to occupy such ground in a military cantonment confers no proprietary right, it continues the property of the State. It is resumable at the pleasure of Government, but in all practical cases one month's notice of resumption will be given, and the value of the buildings which may have been erected thereon, as estimated by a committee will be paid to the owner.”

E, erected a bungalow on the land and in 1874 he sold the bungalow and all his interest in the land to H, whose interest devolved, at his death, on his executors, the defendants. On the 19th October, 1903, a notice was given on behalf of the Bombay Government to the 1st defendant that he should, on the 1st December, 1903, quit the possession of premises and deliver them to the Cantonment Magistrate of Poona and that the Government was prepared to pay to him Rs. 15,500. The defendants having declined to comply with the notice, the Secretary of State for India in Council filed a suit to recover possession of the property from the defendants. The defendants, in answer, contended that one month's notice to the remaining two executors (defendants 2 and 3) was not given and that the value of the buildings had not been estimated or tendered.

Held, (1) that the giving of a notice was not a condition precedent; the provision about it being nothing more than a statement of what will be done, where practicable, for the purpose of saving the occupant from such inconvenience as an immediate resumption might involve;

(2) that, even if it be assumed that notice was a condition precedent to the right of resumption, it was clear that the three executors, on their own showing, were joint occupants and notice given to one of them satisfied the provision;

(3) that payment was not made condition precedent to resumption, though no doubt the right to that payment would arise on resumption (a). **Secretary of State for India in Council v. Yamanrao Narayan**, 7 Bom. L. R. 735 = 30 B. 137.

JENKINS, C.J. and BATTY, J.

Reference.—(a) 6 A. 148, *Distd.*

Resumption.—(Concluded).

(2)—of maintenance grant—See MAINTENANCE GRANT, No. 1, 8 C.L.J. 521.

See, also, I, 832, No. 2; and *Chowkidari Chakrasi Lands*, No. 1.

Revenue Authorities.

See I, *Lower Burma Town and Village Lands Act, 1898*, No. 1.

Revenue Court.

Right of Hindu widow to claim partition in a—See HINDU LAW (WIDOW), No. 1, 9 O.C. 53.

Revenue Courts (N.W.P.).

See ACT XVI OF 1865 (N.W.P.).

Revenue Records.

Wrong entry in,—Suit for possession by partition of *shamilat* lands—See LIMITATION ACT, No. 88, 151 P.L.R. 1906.

Revenue Recovery Act (Madras).

See ACT II OF 1864 (MADRAS).

See, also, I, 833-834.

Revenue Sale.

See I, 834-836.

Revenue Sale Law (Bengal).

See under ACT XI OF 1859 (BENGAL).

Reversioners.

See I, *Mines*, No. 2; and *Hindu Law (Reversioners)*.

Review.

(1) Application for—on the ground of fraud of a decree against a minor on compromise by guardian, maintainability of—See CIV. PRO. CODE, No. 245, 3 C.L.J. 119.

(2) Application for—of an *ex parte* order by the legal representatives of a deceased party, maintainability of—See CIV. PRO. CODE, No. 88, 9 O.C. 35.

(3) No appeal from order refusing—of judgment—See CIV. PRO. CODE, No. 80, 3 A.L.J. 119.

(4) Fraud in connection with compromise petition is good ground for—of the compromise decree—See CIV. PRO. CODE, No. 339, 10 C.W.N.

(5) Whether presentation of an application for— is a 'sufficient cause' for delay in presenting on appeal—See LIMITATION ACT, No. 6, 3 C.L.J. 545.

Review.—(Concluded).

(6) Decree passed on compromise entered into by pleader—Application for review of compromise-decree on the ground that pleader had no authority to compromise—Rejection of application—Fresh suit to set aside compromise-decree, whether maintainable—See RES JUDICATA, No. 14, 10 C.W.N. 529.

(7) Order of a District Judge under S. 7 of the Guardian and Wards Act, whether open to—See ACT VIII OF 1890 (GUARDIAN AND WARDS), No. 5, 148 P.R. 1906.

(8) Discovery of favorable decision of superior Court whether good ground for a—See CIV. PRO. CODE, No. 842, 124 P.R. 1906.

(9) A Court has no jurisdiction for, of its own decree, after dismissal of appeal therefrom—See CIV. PRO. CODE, No. 290, 4 C.L.J. 566.

(10) Court's power to—its own judgment during the pendency of appeal and when the appeal is dismissed—See CIV. PRO. CODE, No. 336, 8 Bom. L.R. 842.

(11)—of judgment—Order dismissing rule granted—Limitation—See CIVIL PROCEDURE CODE, No. 337, 7 Bom. L.R. 664.

(12) Filing of appeal pending application for—Review granted—Effect of order on appeal—See CIVIL PRO. CODE, No. 340, A.W.N. (1905), 265.

(13) Second application for—Disagreement of the Civil and the Revenue Courts—Sufficient cause for delay within Limitation Act, 'S. 5—See ACT XVI OF 1887 (PUNJAB), No. 13, 9 P.R. 1905 (REV.).

See, also, I, *Civil Pro. Code*, Nos. 332, 333; *Decree*, No. 27; *Letters Patent (Calcutta)*, No. 1; *Limitation Act*, No. 146.

Revision.

(1) *High Court's powers of—*

The High Court is ordinarily very slow to interfere in revision with an order made by a Subordinate Court in the exercise of its discretion. But when the effect of an order is to nullify the provisions of a section of the Code, the High Court will interfere in setting it aside as an order made in the illegal exercise of jurisdiction. *Braja Bala Devi v. Gurudas Mandal*, 3 C.L.J. 293=38 C. 487.

RAMPINI and MOOKERJEE, JJ.

Reference.—1 C.W.N. 617, R.

Revision.—(Continued).

- (2) *Omission to consider important materials on record—Material irregularity on the part of the Court rendering its order subject to revision under S. 70 (1) (a) of the Punjab Courts Act.*

Where a Court, having heard before it materials for a decision, ignored certain vital portions of those materials, which, if considered, must have led the Court to a different conclusion from that actually arrived at; *held*, the matter was one analogous to the improper refusal by a Court to admit important evidence and if it could be established that, using all the available materials, the Court should or must have come to a different conclusion, 'the Court must be deemed to have acted with material irregularity' within the meaning of cl. (1) (a) of S. 70 of the Act and its order was consequently subject to revision under that section. **Chuni Lal v. Mehr Chand**, 29 P.R. 1906 = 97 P.L.R. 1906.

JOHNSTONE, J.

References.—11 C. 6, 60 P.R. 1891 and 26 P. R. 1899, R.

- (3) *Civil cases—Limitation—Application for revision—Copy of decree or judgment not necessarily to be filed in Court.*

In the case of a revision-petition, no copy of order or judgment impugned is, *by law*, rendered necessary as annexure to the petition. **Mehar Singh v. Gurbachana**, 146 P.L.R. 1906.

JOHNSTONE, J.

- (4) *Appeal to the High Court treated as an application for—See CIV. PRO. CODE, No. 80, 3 A.L.J. 119.*

- (5) *Application by owner objecting to sale of property in execution of a decree under S. 88, order in appeal on—Memorandum of appeal to High Court treated as petition in revision—See CIV. PRO. CODE, No. 121, A.W.N. (1906), 62.*

- (6) *Power of High Court to exercise its jurisdiction of its own accord—See CIV. PRO. CODE, No. 264, 10 C.W.N. 609.*

- (7) *Error of Law not connected with the jurisdiction of the Courts if not a ground for—See CIV. PRO. CODE, No. 330, 9 O.C. 107.*

- (8) *The power of a Presy. S. C. Ct. under S. 88 of Act XV of 1882 is not similar to the power of—possessed by the High Court—See ACT XV of 1882 (PRESIDENTIAL SMALL CAUSE COURTS), No. 2, 8 Bom. L.R. 678.*

Revision.—(Concluded).

- (9) *Suit in forma pauperis, application to file—Possession of property by the applicant, of value less than the amount required for Court Fee—See CIV. PRO. CODE, No. 142, 8 Bom. L. R. 942.*

- (10) *Power of—of High Court to interfere with order of Lower Court refusing to file an award—See CIV. PRO. CODE, No. 273, 8 Bom. L.R. 570.*

- (11) *An order under S. 295, CIV. PRO. CODE, whether open to—See CIV. PRO. CODE, No. 170, 128 P.R. 1906.*

- (12) *Erroneous finding as to bar by limitation when precludes—See ACT XVIII of 1884 (PUNJAB COURTS), No. 3, 118 P.R. 1906.*

- (13) *Whether High Court will interfere in, when remedy by appeal is open—See CIV. PRO. CODE, No. 333, 8 L.B.R. 131.*

- (14) *The proper remedy on refusal to bring legal representative on record is an appeal and not an application for—See CIV. PRO. CODE, No. 213, 9 O.C. 354.*

- (15) *Final order of Collector under S. 153 of Bengal Act X of 1859, power of High Court to interfere within—See CIV. PRO. CODE, No. 334, 11 C.W.N. 112.*

- (16) *Lower Court's order not passed on illegal exercise of jurisdiction or on failure to exercise jurisdiction—Power of High Court to interfere in—See CIVIL PROCEDURE CODE, No. 177, A.W. N. (1905), 193.*

- (17) *Powers of—possessed by the High Court—High Court's power to call for records for—of its own accord—Powers of—where other remedies are open—See CIVIL PROCEDURE CODE, No. 127, A.W.N. (1905), 191.*

- (18) *Dismissal of appeal rightly though on wrong grounds—High Court's power of revision—See CIV. PRO. CODE, No. 8-a, 16 M.L.J. 526.*

See, also, I, Act I of 1879 (Bengal), No. 2; Act XVIII of 1884 (Punjab), No. 2; Appeal (Civil), No. 57; Civil Pro. Code, Nos. 111, 313, 325 and 329; Punjab Courts Act (XVIII of 1884), Nos. 1, 2, 3, 4; Small Cause Courts Act, Provincial (IX of 1887), Nos. 3 and 4.

Revocation.

- of submission to arbitration—good cause—collusion of arbitrator—See ARBITRATION, No. 2, 3 A.L.J. 618.

Right of occupancy.

- (1) *Ghatwali lands, whether occupancy rights can be acquired in.*

The question in this appeal was whether occupancy rights could be successfully acquired in Ghatwali lands. *Held*, that, upon principle, having regard to the nature of lands under Ghatwali tenure, and in view of S. 181 of the Bengal Tenancy Act, the acquisition of occupancy rights in such lands is inconsistent with the incidents of such a tenure. **Upendra Nath Hazra v. Ram Nath Chowdhry**, 33 C. 690.

MACLEAN, C.J. and GEDD, J.

Reference.—1 C.L.J. 139, R.

- (2) Acquisition of—Agreement between landlord and tenant, validity of—See ACT VIII OF 1885 (BENGAL TENANCY), No. 65, 33 C. 136.

Right of suit.

- (1) A party to an action can impeach the judgment in it for fraud, by means of a fresh suit for the purpose, where the judgment is that of a British Court or of a Foreign Court and that not only where there has been a fraud on the Court by what are called extrinsic circumstances but also where the judgment, which the party seeks to set aside has been obtained by the other party by fraud on the Court by committing deliberate perjury and suppressing evidence. **Yenkatappa Naik v. Subba Naik**, 16 M.L.J. 59.

BODDAM and MOORE, JJ.

References.—25 Q.B.D., p. 314, 10 Q.B.D., p. 297 and 10 Ch. D., p. 327, R.

- (2) *Suit by judgment-debtor to recover money paid to decree-holder under an agreement—Suit before actual execution taken out in spite of the agreement—Maintainability.*

A judgment-debtor paid a certain amount to the decree-holder under an arrangement that the latter should certify to the Court that the decree was fully satisfied. Without, however, entering such satisfaction, the decree-holder, applied for execution and the judgment-debtor immediately on receipt of a notice under S. 248 Civil Procedure Code, sought, by the present suit, to recover from the decree-holder the sum the latter had received under the above arrangement. Defendant, the decree-holder pleaded, *inter alia*, that the suit was not maintainable before actual execution of the decree and realisation of money thereunder from the plaintiff and the question was referred to the High

Right of suit.—(Continued).

Court, whether the plaintiff had a cause of action for the suit and could recover back the sum paid in discharge of the decree-debt due by him to the defendant, although the latter had not executed the decree and recovered the sum again from the plaintiff. *Held*, that the suit was not maintainable. **Sriramulu v. Dalayya**, 16 M.L.J. 54.

BENSON and MOORE, JJ.

- (3) *Suit for money paid for the use of the defendant, maintainability of—Absence of obligation to pay, express or implied—Payment against the will of the defendant.*

Upon a *putni* sale under Regulation VIII of 1819, a portion of the surplus sale proceeds, standing to the credit of the defaulter, was withdrawn by an execution creditor of one of them. On a suit by the defaulter, the sale was set aside and the landlord had to refund the purchase money to the auction purchaser. The landlord having sued for the recovery of the amount withdrawn by the execution creditor:

Held, that the defaulter whose creditor had withdrawn the money was not liable to pay. It is not in every case in which a man has benefited by the money of another, that an obligation to repay that money arises. To support such a suit there must be an obligation, express or implied, to repay. There is no such obligation in the case of a voluntary payment and still less when money has been paid against the will of the party for whose use it is supposed to have been paid (a). **Roop Channessa Bibi v. Bejoychand Mahatap**, 3 C.L.J. 248.

MACLEAN, C.J. and PRATT, J.

References.—(a) 15 B.L.R. 208=2 I.A. 143 and 1 T.R. 20, R.

- (4) *Suit by co-sharer for joint possession of one of several properties, maintainability of.*

It is competent for a co-sharer, who is debarred from enjoyment in one of several properties owned by him in common with the rest of his co-sharers to sue for joint possession in respect of that property alone without claiming a similar relief in respect of the other joint properties. **Sura Singh v. Sant Singh**, 43 P.R. 1906=122 P.L.R. 1906.

ROBERTSON and CHITTY, JJ.

References.—77 P.R. 1887, 7 B. 182, 7 B. 272 11 C. 566, 162 P.R. 1884, D.

- (5) *Mistake in decree—Separate suit to set aside—Maintainability.*

Right of suit.—(Continued).

It cannot be broadly laid down that any error in a decree made by a Court may be challenged by a separate suit. **Chand Mea v. Srimati Asima Banu**, 10 C.W.N. 1024.

GHOSE, and PARGITER, JJ.

References.—3 C.W.N. 375 and 8 C.W.N. 473, R.

- (6) *Money due under promissory note, agreement to pay, contained in a subsequent deed of assignment—Right of fresh suit, whether given by such deed.*

A promissory note was executed by the defendant to the plaintiff. Subsequently, the defendant executed, in favour of plaintiff, a deed of assignment of certain decrees and it was agreed therein, that the amount which plaintiff might recover from those decrees must be credited towards the amount due to him under the promissory note, and that any balance which might be left due under it, after such deduction must be paid separately by the defendant. The original promissory note, however, had not been cancelled. The present suit was instituted for the recovery of such balance, as under the agreement to pay the same, contained in the assignment deed. *Held*, the obligation under the promissory note was the only one on which the plaintiff was entitled to sue and that the provisions in the subsequent deed as to the adjustment of the debt and the payment of the balance, if any, did not operate to extinguish the obligation under the promissory note, or create an independent right of suit in favour of plaintiff. The present suit, therefore, having been brought after expiry of the period of limitation, which would have governed the suit if brought upon the note, the lower Court was right in having dismissed the suit as barred. **Venkataramiah, Pantulu v. Ramakrishna Pantulu**, 29 M. 205.

SUPRAHMANIA AIYAR and BENSON, JJ.

Reference.—3 Ch. D. 290, R., and *Appl.*

- (7) *Decree for possession barred by limitation—Effect of such bar by neglect to execute—fresh suit for possession not maintainable.*

Where plaintiffs obtained a decree for possession of immovable property, but did not apply for execution of the same within the period of limitation and brought the present suit again, for recovery of possession of the same property, *held*, the plaintiffs having allowed the period, distinctly prescribed for execution of their de-

Right of suit.—(Continued).

eree to expire, the decree had become a nullity and they had no right to subsequently rely upon that decree and sue again to recover possession of the same land upon the footing thereof, since the mere fact, that there was once in existence an executable decree made in their favour, could not entitle them to institute a fresh suit, upon the same cause of action, upon which the former suit had been founded. **Oman Sheikh v. Halakuri Sheikh**, 33 C. 679.

GHOSE and PARGITER, JJ.

- (8) *Malice—Notice—Defendant refusing to receive nomination papers—Election.*

To support an action for damages against a person, appointed to receive the nomination papers of candidates for councillorship on a Municipality, for refusing to receive a nomination paper, it is necessary to allege and prove malice. **Chunifal Maneklal Gandhi v. Kirpashankar Bhagwanji Vyas**, 8 Bom. L.R. 898.

JENKINS, C.J. & BEAMAN, J.

- (9) *Suit for possession against trespasser—plaintiff's title, proof of—possession good title against all but rightful owner.*

In a suit by a mortgagee (plaintiff) for possession of the mortgaged property from which the defendant had dispossessed him, the defence was that the original mortgagor had no title to the property and, therefore, could not mortgage it to the plaintiff and, consequently, the plaintiff's suit was not maintainable. *Held*, that the plaintiff was entitled to a decree, unless the defendant was the true owner. Possession is good title against all persons except the rightful owner and entitled the possessor to maintain an action in ejectment against any person other than such owner, who dispossesses him. **Rampal Singh v. Raja Mustafa Ali Khan**, 9 O.C. 273.

CHAMBER and EVANS, J.CS.

Reference.—2 O.C. 3, R.

- (10) *Maintainability of suit by real purchaser against benamidar—Sale in execution of decree—See BENAMI TRANSACTIONS, No. 1, 3 P. R. 1906.*

(11)—for declaration on failure to appeal from an order dismissing without enquiry an application under S. 232—See CIV. PRO. CODE, No. 103, 16 M.L.J. 27.

(12) *Covenant in a usufructuary mortgage—Enhancement of kist—Right of mortgagor to*

Right of suit.—(Continued).

sue for the excess *list* paid by him—See **MORTGAGEE and MORTGAGEE**, No. 2, 16 M.L.J. 28.

(13) Right of pre-emption not exercised by Hindu husband during his life time—Suit by widow for pre-emption, maintainability of—See **LIMITATION ACT**, No. 41, 8 A.L.J. 191.

(14)—of a son to recover his share in the property sold in execution of a decree against his father—See **HINDU LAW (DEEDS)**, No. 1, 8 A.L.J. 10.

(15) Contract to make testamentary dispositions—Right of assignee from a person in whose favour such a contract exists to sue for declaration of his rights—See **TRANSFER OF PROPERTY ACT**, No. 7, 9 O.C. 55.

(16)—of a minor to set aside, on the ground of fraud, a decree based on a compromise entered into by his guardian—See **CIV. PRO. CODE**, No. 80, 8 A.L.J. 119.

(17) Suit not maintainable by usufructuary mortgagee for money, when the mortgaged property is lost by his own default—See **TRANSFER OF PROPERTY ACT**, No. 52, 3 C.L.J. 220.

(18)—of an auction-purchaser for the recovery of purchase-money from the decree-holder on the ground of judgment-debtor's want of title to the property sold—See **CIV. PRO. CODE**, No. 183, 10 C.W.N. 274.

(19) Tenant dispossessed by a trespasser—Right of Landlord to sue the trespasser—See **ADVERSE POSSESSION**, No. 1, 10 C.W.N. 843.

(20) Decree incapable of being executed for future mesne profits—Maintainability of separate suit to recover such profits—See **DECLARATORY DECREE**, No. 2, 1 M.L.T. 69.

(21) Maintainability of suit to set aside order of Magistrate trying a petition to set aside a Municipal election—See **ACT I OF 1900 (N.W.P. AND OUDH MUNICIPALITIES)**, No. 2, A.W.N. (1906), 97.

(22) Suit to recover money paid to release property from unlawful revenue attachment in a Civil Court, maintainability of—See **CONTRACT ACT**, No. 27, A.W.N. (1906), 114.

(23) Dismissal of application under S. 232, **CIV. PRO. CODE**—Maintainability of suit to establish right to execute decree—See **CIV. PRO. CODE**, No. 102, A.W.N. (1906), 133.

(24) Objections by legal representative of judgment-debtor that attached property was trust-property in his possession disallowed—

Right of suit.—(Continued).

Suit contesting such order, maintainability of—See **CIV. PRO. CODE**, No. 120, A.W.N. (1906), 157 = 3 A.L.J. 370.

(25) First suit for partition dismissed for default—Maintainability of second suit for the same purpose—See **CIV. PRO. CODE**, No. 75, 3 A.L.J. 379.

(26) Maintainability of suit by one decree-holder receiving rateable distribution against a rival decree-holder similarly circumstanced for a declaration that the latter's decree is fraudulent—See **CIV. PRO. CODE**, No. 189, 3 C.L.J. 385.

(27) Suit, compromised by pleader—Application for review on ground of pleader's authority to compromise rejected—Fresh suit to set aside decree, maintainability of—See **RES JUDICATA**, No. 14, 10 C.W.N. 529.

(28) Collection by some of several co-sharers of portions of rent from tenants—Suit by all co-sharers jointly for the whole rent, maintainability of—See **CO-SHARERS**, No. 1, 10 C.W.N. 787.

(29) Alienation of ancestral *debutter* property by father and uncle in a joint Hindu family—Right of a member to sue to set aside the alienation and for recovery of the property—See **HINDU LAW (RELIGIOUS MATTERS)**, No. 2, 83 C. 507.

(30)—on a pro-note neither barred nor suspended by reason of a collateral covenant not to sue for a specified time—See **PROMISSORY NOTE**, No. 1, 16 M.L.J. 108.

(31) Suit by member of an unregistered *chit* fund, consisting of more than twenty members, for recovery of subscription paid, maintainability of—See **ACT VI OF 1882 (COMPANIES)**, No. 2, 1 M.L.T. 106.

(32) One of two joint decree-holders recovering whole amount—Right of the other to sue for his share—See **CIV. PRO. CODE**, No. 108, 29 M. 183.

(33) Mere proposal to sell does not entitle a person to claim pre-emption—See **PRE-EMPTION**, No. 14, 9 O.C. 169 (B).

(34) Maintainability of suit for a declaration that the land in dispute is joint property liable to be partitioned according to revenue holdings and not according to ancestral shares—See **ACT XVII OF 1887 (PUNJAB LAND REVENUE)**, No. 3, 46 P.L.R. 1906.

Right of suit.—(Continued).

(35) Suit by *Vadagalai Dharmakartas* (Trustees) for declaration of right of management and for injunction restraining *Tengalai Arakkars* (worshippers) from interfering with former's management of a *Tengalai* shrine, maintainability of—See **RELIGIOUS ENDOWMENTS**, No. 1, 18 M.L.J. 150.

(36) Money paid by a person to raise an attachment to clear his own title—Suit to recover such money from the true owner, maintainability of—See **CIV. PRO. CODE**, No. 154, 16 M.L.J. 186.

(37) Delivery of formal possession in execution proceedings—Maintainability of suit for actual possession—See **CIVIL PRO. CODE**, No. 111, 8 A.L.J. 504.

(38) Decree-holder's taking possession of greater area than what was decreed—Suit by judgment-debtor for possession, maintainability of—See **CIV. PRO. CODE**, No. 110, 8 A.L.J. 601.

(39) Objections to partition in Revenue Court, summary dismissal of—Suit to set aside the order, maintainability of—See **ACT III OF 1901 (N.W.P. LAND REVENUE)**, No. 18, 8 A.L.J. 617.

(40) First suit for partition—Execution proceedings struck off for default of parties after appointment of Amin to effect partition—Second suit for partition, whether maintainable—See **CIV. PRO. CODE**, No. 20, 10 C.W.N. 839.

(41) Surety guaranteeing payment of judgment-debt when judgment-debtor arrested and brought before Court under S. 886, **CIV. PRO. CODE**—Suit by decree-holder on surety's default—See **CIV. PRO. CODE**, No. 201, 10 C.W.N. 830.

(42) Infringement of right of worship—Suit by some members of a community on behalf of themselves and other members of the community, not on behalf of the public in general—Maintainability of suit—See **CIV. PRO. CODE**, No. 89, 10 C.W.N. 887.

(43) Letters of administration, with copy of will annexed, granted to a legatee in respect of his legacy alone—Right of another legatee to sue for recovery of his legacy—See **ACT X OF 1905 (INDIAN SUCCESSION)**, No. 14, 10 C.W.N. 864.

(44) Share-holders of a Company, right of, to sue for a declaration that they are entitled to vote at a meeting—See **ACT VI OF 1882 (COMPANIES)**, No. 8, 10 C.W.N. 906.

Right of suit.—(Continued).

(45) Suit for damages for malicious arrest, whether maintainable when arrest ordered by Officer having discretionary power to order arrest on facts placed before him by defendant—See **MALICIOUS ARREST**, No. 1, 29 M. 208.

(46) Sale to stranger with concurrence of co-sharer—Purchase by such co-sharer—Maintainability of suit for pre-emption. See **PRE-EMPTION**, No. 89, 8 A.L.J. 794.

(47) Suit for possession on possessory title of plaintiff's predecessor, plaintiffs never themselves being in possession—See **POSSESSION**, No. 4, A.W.N. (1906), 264.

(48) Of a lessee or a person in lawful possession of a house—interference with right of privacy—See **EASEMENTS ACT (V OF 1882)**, No. 1, 8 A.L.J. 670.

(49) Interest to pay Government revenue—subsequent suit to recover money paid from person benefited by payment—See **CONTRACT ACT (IX OF 1872)**, No. 28, 8 A.L.J. 665.

(50) Suit for damages for false imprisonment—Prosecution after investigation—Acquittal of accused—maintainability of suit against accused—See **FALSE IMPRISONMENT**, No. 1, 8 A.L.J. 650.

(51) Suit for damages for breach of contract to sell by the guardian of a lunatic without Court's permission, maintainability of—See **ACT XXXV OF 1858 (LUNATICS)**, No. 6, 8 A.L.J. 686.

(52) Separate suit maintainable by owner for damage by the Public Works Department before publication of notice under S. 6, of **Act I of 1894**—See **ACT I OF 1894 (LAND ACQUISITION)**, No. 6, 8 L.B.R. 117.

(53) Bill or note given by debtor for payment of money on cause of action already arisen—Creditor's right to sue on the original consideration independently of the bill or note—See **CAUSE OF ACTION**, No. 1, 15 M.L.J. 484.

(54) Suit in High Court based on order of the Insolvency Court (in this case the High Court itself)—Order of Insolvency Court is judgment of High Court—See **INSOLVENCY**, No. 3, 9 C.W.N. 952.

(55) Suit of a civil nature—Religious rites and ceremonies—See **CIVIL PRO. CODE**, No. 5, 2 C.L.J. 890.

See, also, I, 838-844; *Act V of 1881 (Probate and Administration)*, N. 9; *Act X II*

Right of suit.—(Concluded).

of 1881 (N.W.P.), No. 6; *Act I of 1906* (N.W.P. & Oudh Municipalities), No. 2; *Act VIII of 1885* (Bengal), Nos. 95 and 96; *Civil Pro. Code*, Nos. 49, 127, 129, 130, 137, 141 and 274; *Compensation*, No. 3; *Criminal Pro. Code*, No. 2; *Decree*, Nos. 26 and 27; *Easements*, No. 1; *Hindu Law (Maintenance)*, No. 5; *Hindu Law (Reversioners)*, No. 10; *Jurisdiction (Civil Courts)*, No. 44; *Limitation Act*, No. 8; *Mortgage (Sale)*, No. 4; *Pre-emption*, No. 34; *Receiver*, No. 1; *Slander*, No. 1; and *Will*, No. 3.

Riparian Owners.

See I, 814, 815; and *Easement*, No. 5; and *Easements Act*, No. 1.

Riparian Proprietors.

(1) *Upper and lower, rights of—Stream, natural, waters of—Ordinary and extraordinary uses, natural and artificial wants, distinction between—Irrigation, if primary use of stream water.*

Riparian owners have equal rights to a usufruct of the waters of an adjacent natural stream, and no proprietor has the right to use the water to the prejudice of other proprietors, above or below, unless he has a prior right to diversion (a).

There is a distinction between the ordinary and extraordinary uses of water, or uses for the purpose of satisfying natural and artificial wants. Every riparian proprietor has a right to the ordinary use of water, without regard to the effect which such use may have, in case of a deficiency, upon proprietors lower down the stream. But, in the case of extraordinary use, he must not interfere with the rights of other proprietors (b).

A user, which is extraordinary in one place or at one time, may be ordinary in another, owing to the surrounding circumstances, or to changes in the locality (c).

Under the English law, irrigation is not a primary use, and whether a riparian owner may use the water of a natural stream to irrigate his land, depends upon the quantity of water he requires and the injury he inflicts upon other riparian owners (d).

Under the American law, the balance of authority is in favor of the view, that the rela-

Riparian Proprietors.—(Concluded).

tive importance and necessity of the several uses of the water of a particular stream must depend upon the circumstances of each case, and that all the circumstances are to be considered in determining the reasonableness of the use for irrigation. One proprietor cannot, under any circumstances, divert and consume the entire flow of a stream for irrigation purposes to the exclusion of lower proprietors. This rule ought to be applied for India (e). **Balabhadra Persad Singh v. Najiban alias Basmatia**, 4 C.L.J. 370=11 C.W.N. 85.

RAMPINI and MOOKERJEE, JJ.

References:—(a) 6 Exch. 359, and 138 U.S. 547, F. (b) 12 Moo. P.C. 181, L.R. 2 Exch. 9, 4 App. Cas. 121, L.R. 6 I. A. 33, (1904) A.C. 301, F. (c) 11 Q.B.D. 155, Appl. (d) 8 Exch. 748, 6 Exch. 353, IL (e) 93 California 676 and 24 C. 865=24 I.A. 60, Appl.

See, also, I, *Injunction*, No. 15.

Riparian Rights.

(1)—*Right to the unimpeded flow of water—Diverting the course of the river—Damages.*

A riparian owner may put water that flows through his land to certain uses connected with his land and for that purpose he may be entitled to divert its course: but it must be done in such a manner as not to inflict any material injury on the lower riparian proprietor. **Waman Babuji v. Changu Patil**, 8 Bom. L.R. 87.

SIR LAWRENCE JENKINS, C.J. and BACHELOR, J.

River.

(1) Diversion of the course of a—by a higher riparian proprietor must be done without injury to lower proprietor—See **RIPARIAN RIGHTS**, No. 1, 8 Bom. L.R. 87.

(2)—shifting its course and forming *dobas* or lakes—Right of fishery in such *dobas*—See **JALKAR RIGHTS**, No. 2, 33 C. 15.

See, also, I, *Accretion*, No. 1.

River action.

Claim for land subject to.—Decree in respect of land under water—See **ALLUVION and DILUVION**, No. 1, 152 P.L.R. 1906.

Rokar Accounts.

See I, *Evidence Act*, No. 9.

Roman Catholic Christians.

See I, *Marriage*, No. 1.

River bed..

Presumption of land re-appearing from—*Wajib-ul-ars*—See LIMITATION ACT, No. 8, 158 P.L.R. 1906, IN THE SUPPLEMENT.

Rule of double portions.

See *I, Hindu Law (Will), No. 3.*

Rules of the Bombay High Court.

Rule No. 361 merely sanctions the use of a firm's name in suits as a convenient description of its several members and it does not extend or in any way affect the Court's jurisdiction—See LETTERS PATENT (BOMBAY), No. 1, 8 Bom. L.R. 56.

Rules of the Calcutta High Court.

Rule No. 748 of the Calcutta High Court—Discretion of Court to call for further evidence of identity in the case of a Power of Attorney authenticated by a Notary Public—See EVIDENCE ACT, No. 8, 89 C. 625.

Rules of the N.W.P. High Court.

(1) *4th April, 1894, No. 80 (I)*—Certificate and affidavit of Legal Practitioner's fee filed subsequent to judgment.

Where no certificate or affidavit as to the fees of a legal practitioner under Rule 80 (1) of the Rules (High Court) of the 4th April, 1894, was filed until after delivery of the judgment. *Held*, that the amount of the fee should not have been included with the other costs, but that, had their Lordships been satisfied that the fee was in point of fact paid prior to the delivery of the judgment, it is possible that they would not have exercised their discretionary power to interfere under S. 622 of the Code of Civil Procedure. *Bishun Singh v. Rajah Patesari Partap Narain Singh*, A.W.N. (1906), 169.

HANERJI and AIKMAN, JJ.

(2) Rules of the High Court of the 18th January, 1898, Rules 2, 180, 182, 183 and 197—Advocate—Misconduct—Removal from the roll of Advocates—See LETTERS PATENT (N.W.P.), No. 2, 3 A.L.J. 592=1 M.L.T. 252=A.W.N. (1906), 226.

See, also, *I, Costs, No. 7; and Munsarim, No. 1.*

Ryotwari Tenure.

See *I, 845-847.*

Sale.

(1) *Registered sale-deed—Effect of, although the purchase money not paid.*

Sale.—(Concluded).

A registered sale-deed passes the property to the vendee, although he fails to pay the vendor the purchase money, and although the deed of conveyance was never delivered to the vendee (a). In case of non-payment, the remedy of the vendor is to sue for the unpaid purchase money, for which he also has a lien. But he has no right, on account of non-payment, to cancel the sale-deed by another document, conveying the property to a third person; and such conveyance in favor of third person cannot prejudice the original vendee. *Krishnan Embrandri v. Marakkhar*, 1 M.L.T. 432.

BENSON and WALLIS, JJ.

References:—(a) 17 M. 146; 15 M. 54; 11 A. 244; 21 M. 56, *Appr. & F.*

(2)—under Act I of 1895—Necessity of notice under S. 81 of the Act for the validity of a—See ACT I OF 1895 [(B.C.), PUBLIC DEMANDS RECOVERY], No. 1, 3 C.L.J. 280.

(3)—under registered deed—Effect of non-payment of purchase-money—Rights of subsequent purchaser and vendor as against prior purchaser—See TRANSFER OF PROPERTY ACT, No. 30-a, 16 M.L.J. 524.

(4) Suit for recovery of debt—Sale in consideration of debt—Claim on sale agreement falling through—See LIMITATION ACT, No. 2, 155 P.L.R. 1906, IN THE SUPPLEMENT.

See, also, *I, Administration Suit, No. 1; Civil Pro. Code, No. 129; Right of Suit, No. 23; and Transfer of Property Act, No. 56.*

Sale certificate.

Value of—issue under the Revenue Sale Law (Bengal Act XI of 1859)—See ACT XI OF 1859 [REVENUE SALE LAW (B.C.)], No. 1, 10 C.W. N.948.

Sale in auction.

(1)—of escheated property by Government, whether Government could re-sell after acceptance of bid and of the deposit by purchaser—Purchaser at the re-sale, rights of.

Where the Sirkar had announced the sale of certain escheated property, by way of auction, to the highest bidder without reserve, and plaintiff bid for the same and the offer was accepted with the necessary deposit by the plaintiff, it was *held*, that plaintiff became entitled to the property when he was ready to pay the balance, within the fixed time, though

Sale in auction.—(Concluded).

such payment might not have been then accepted. *Held*, also, that, there having been a complete contract between the plaintiff and the *Sirkar*, the latter could not set aside the auction and re-sell the property at their pleasure. The re-sale by the *Sirkar* in this case was, therefore, invalid and the purchaser at the re-sale, with his full knowledge of the plaintiff's rights from the prior sale, cannot support himself by attempting to plead any *bona fides* in his transaction. *Yava Adimia v. The Dewan of Travancore*, 21 T.L.R. 215.

RAMACHANDRA ROW & EAPEN, JJ.

Sale in execution.

- (1) *Delivery of formal possession, to auction purchaser, effect of—limitation saved not only against the judgment-debtor but also against his co-sharer.*

Held, that formal possession obtained by an auction-purchaser of an undivided share saves limitation not only as against the judgment-debtor but as against the co-sharers, with whom he is in joint possession. *Hanuman Das v. Ambika Parshad*, 3 A.L.J. 659 = A.W.N. (1906), 278.

RICHARDS, J.

- (2) *Suit for confirmation of—dismissed by first Court but decreed by appellate Court—Judgment-debtor no party to appeal—Second sale meanwhile, validity of—See EXECUTION OF DECREE*, No. 8, 3 A.L.J. 91.

- (3) *Suit to set aside a, for fraud—compensation whether awardable in the alternative in a—See CIV. PRO. CODE (TRAVANCORE)*, No. 4, 21 T.L.R. 206.

- (4) *Effect on—of omission is to affix proclamation on the property—See CIV. PRO. CODE (TRAVANCORE)*, No. 5, 21 T.L.R. 157.

- (5) *Purchaser of property at, whether could validly sell the same before confirmation—See CIV. PRO. CODE (TRAVANCORE)*, No. 3, 21 T.L.R. 152.

- (6) *Conduct of, in a place other than that mentioned in the proclamation, whether a material irregularity—See CIV. PRO. CODE*, No. 187, 192 P.R. 1906.

- (7) *Nontransferability of occupancy rights to purchaser on—See OCCUPANCY RIGHTS*, No. 4, 11 O.W.N. 76.

- (8) *Effect on, of failure to deposit purchase-money—See CIV. PRO. CODE*, No. 173, 3 L.B.R. 225.

Sale in execution of decree.

- (1) *Money-decree in favour of mortgagee, sale of mortgaged property in execution of—sale void as contravening S. 69 of the Transfer of Property Act—See TRANSFER OF PROPERTY ACT*, No. 107, 38 C. 288.

- (2)—*conducted by officer in spite of Court's order staying it, effect of—See PRAEMPTION*, No. 43, 9 O.C. 289.

See, also, I, 848; *Act VIII of 1885 (Bengal)*, No. 43; *Civil Pro. Code*, Nos. 144 and 197; *Mortgage (Redemption)*, No. 5.

Sale for arrears of revenue.

See I, Act XI of 1859 (Bengal), No. 10.

Sale of Goods.

See I, Contract Act, No. 28.

Sale Proclamation.

See I, Act XI of 1859 (Bengal) and Crim. Pro. Code, No. 1.

Sanction.

See I, Act XX of 1891 (Punjab), No. 1.

Saranjam lands.

Charge created on—Liability of succeeding Saranjandar to pay the charge—See ACT XXIII of 1871 (PENSIONS), No. 1, 7 Bom. L.R. 659.

See, also, I, *Act XXIII of 1871 (Pensions)*, No. 1.

Sea Customs Act.

See ACT VIII of 1878.

Second appeal.

See cases under I, Appeal (Second Appeal).

Secondary Evidence.

See under REGISTRATION ACT, No. 13, 71 P. R. 1906.

See I, Evidence Act, No. 13,

Secretary of State.

- (1) *Suit against, by dismissed (Government servant—Power of Crown to dismiss servants at will—Suit for salary and declaration of right to pension, whether maintainable.*

The Crown has the power of dismissing its servants at will, and no authority representing the Crown is able to contract with its servants, so as to deprive the Crown of the enjoyment of

Secretary of State.—(Concluded).

that power, and such power can be excluded and restricted only by an Act of the Legislature. Consequently, it is not sufficient for the plaintiff to merely allege a contract restricting the said power, without referring to any statutory enactment exempting him from the liability imposed by law, on those who are engaged in the service of the Crown, and a plaint, therefore, alleging that the Government wrongfully and illegally dispensed with his services and claiming arrears of salary, with a declaration that he was entitled to a pension, does not disclose any cause of action enforceable (a) at law. **A.E. Yoss v. Secretary of State for India**, 33 C. 669.

HARINGTON, J.

Reference.—(a) 1 Q.B. 116, *F*.

See, also, I, Act VI of 1898 (Post Offices), No. 1; and Limitation Act, No. 24.

Security.

(1) Appellate Court can call upon the respondent to furnish—for the due performance of any decree which may be made on appeal, notwithstanding that the lower Court's decree has been already executed—See CIV. PRO CODE, No. 285, 8 C.L.J. 87.

(2) Necessity for furnishing—when judgment-debtor has once applied to a proper Court for insolvency—See CIV. PRO. CODE, No. 203, 9 O.C. 49 (B).

(3) Furnishing of—under S. 17 of the Provincial Small Cause Courts Act is a condition precedent to the entertainment of an application to set aside an *ex parte* decree—See SMALL CAUSE COURTS, PROVINCIAL (ACT IX OF 1887), No. 2, 3 A.L.J. 318 = A.W.N. (1906), 93.

(4)—to be furnished under Act VII of 1889—Whether fixed deposit in a Bank is a—See ACT VII OF 1889 (SUCCESSION CERTIFICATE), No. 1, A.W.N. (1906), 94.

See, also, I, Act V of 1881 (Probate), No. 6; Mortgage (Redemption), No. 17; and Transfer of Property Act, No. 18.

Security-bond.

See I, Transfer of Property Act, No. 18.

Service of process.

(1) Defendant absent from home but his whereabouts known, affixature of summons to the outer door not a good service.

Service of process.—(Concluded).

Appeal from an order refusing an application made by one of the defendants, the present appellant, to have an *ex parte* decree obtained against him set aside under S. 108, Civ. Pro. Code, as he was not duly served with the summons. The affidavit of the process-server was to the effect that the person to be served was not found at his house, but that his wife informed the process-server that her husband was absent at a place of a distance of 84 miles and would return in 8 or 10 days. Without any further attempt to serve the summons, personally, the process-server affixed the summons to the outer door of the house. It was urged for the appellant that the summons had not been served in a legal manner. Setting aside the order appealed against and directing that the *ex parte* decree be set aside, so far as regards the appellant, *held*, that when a serving officer finds a defendant to be away, temporarily, from home, and knows where he is, it is not a good service if he does no more than fix the summons to the outer door of the house; he must make further efforts to effect personal service, by finding the defendant of the summons should be again sent to the defendant's house to be served upon him when the information shows that he is likely to be at home (a). **Dwarkanath Ramachandra v. Norman Grantome Macleod**, 2 N.L.R. 63.

BATTAN, A.J.C.

References.—(a) 19 C. 301, 21 B. 228, 21 M. 419, 24 A. 302, *F*., 21 M. 324, *D*.

Service Tenures.

(1)—forfeiture of, by repudiation of tenancy—Ejectment, suit for—Notice, if necessary—Act shewing intention to determine the lease—*Bengal Tenancy Act (VIII of 1885), Ss. 151, 181—Transfer of Property Act (IV of 1882), Ss. 106 and 111, cl. g.*

Where the holder of a service tenure renounced the title of his landlord and executed a *kabuliat* in favour of a third party in respect of the whole of the land comprised in the tenure, and the landlord brought a suit for ejectment:

Held, that the case falls within the Transfer of Property Act and not within the Bengal Tenancy Act; that no notice to quit was necessary, as the defendant forfeited his tenancy by denying the landlord's title; but that the landlord, before he can eject the tenant, must do some act or other shewing his intention to

Service Tenures.—(Concluded).

determine the lease, and this intention must be shown at sometime antecedent to the institution of the suit (a). **Anandamoyi v. Lakshmi Chandra**, 3 C.L.J. 274=38 C. 329.

GHOSH and PARGITER, JJ.

References.—(a) 2 C.L.J. 403 and 17 A. 45, *Refil. to*.

(2) 'Mokhasa tenure, meaning of—Circuit Committee—proceedings of, evidence.

The tenure known as "Mokhasa" is one, which was created by an assignment of a village or land to an individual, either rent free or at a low quit-rent on condition of service.

Where such a tenure was created as a grant subject to a burden of service and not merely as a grant in lieu of wages, so long as the holder of the grant is willing and able to perform the service, the Zemindar has no right to put an end to the tenure whether the service is required or not (a).

The proceedings of the Circuit Committee of 1786 is good evidence, with reference to the system upon which the Government claimed to deal with the zemindar's property, but they cannot affect the rights of the "Mokhasadars" as against the Zemindars. **Sri Raja Venkata Narasimha Appa Rao Bahadur v. Sri Raja Sobhanadri Appa Rao Bahadur**, 3 C.L.J. 1=10 C.W.N. 161=3 A.L.J. 55=8 Bom. L.R. 1=16 M.L.J. 1=1 M.L.T. 9 (P.C.)=29 M. 52.

LORD DAVEY, SIR ANDREW SCOBLE and SIR A. WILSON.

References.—(a) 13 B.I.R. 124=(1873) L.R. I.A. Sup. Vol. 181, P.

(3) *Under tenants, if can acquire occupancy—Ejectment—Notice to quit.*

When land was granted to a person as a service-tenure, the condition being that he was to hold it in lieu of services to be performed by him as chowkidar.

Held—That tenants under him did not acquire occupancy right by holding the land for more than 12 years:

Held, further,—That on the death of the grantee, the grantor was entitled to sue the under-tenants in ejectment without previously serving them with notices to quit. **Mritunjoy Roy Chowdhry v. Kenathullah Narya**, 11 C.W.N. 46.

GHOSH, C.J. and CARMICHAEL, J.

Reference :—2 C.L.J. 403, R.

See, also, I, 850.

Set-off.

(1) *Applicability of the doctrine of, to damages to both parties from same transaction.*

Where the damages claimed by the defendant in a suit have arisen from the same transaction in respect of which the plaintiff in the suit had based his claim, it is equitable to allow the defendant to set-off the damages due to him as against those claimed from him in the suit. **Krishnan Krishnan Namburi v. The Diwan of Travancore**, 21 T.L.R. 211.

GOVINDA PILLAI and RAMACHANDRA ROW, JJ.

Reference :—2 M.H.C.R. 296, R.

(2)—claimed in a written statement, payment of Court-fees for—See CIV. PRO. CODE, No. 85, 10 C.W.N. 199.

(3)—See PRE EMPTION, No. 35, A. W. N. (1906), 198.

(4) Meaning of the words 'legally recoverable' in S. 111, Civil Pro. Code—See CIVIL PRO. CODE, No. 86, 7 Bom. L.R. 246.

See, also, I, 850-851; Act VI of 1882 (Companies), No. 1; Civil Pro. Code, Nos. 42, 59 & Company, No. 8.

Settlement.

(1) A voluntary deed, not containing the power of revocation, is liable to be set aside as void and not binding upon the settlor, if the Court is not satisfied by the person seeking to uphold it, that the absence of that power and its effect were not duly explained to the settlor. **Ashidbai v. Abdulla Haji Mahomed**, 8 Bom. L.R. 652.

CHANDAVARKAR, J.

(2) Entry of a person's name at the last revision of—as a fixed rate tenant is conclusive evidence of his fixed rate tenancy—See ACT II OF 1901 (N.W.P. TENANCY), No. 3, A.W.N. (1906), 68.

Settlement award.

—of proprietary rights, legal effect of the grant of—See LAND REVENUE ACT (CENTRAL PROVINCES), No. 1, 2 N.L.R. 1.

Settlement officer.

See I, Act VIII of 1885 (Bengal), No. 28.

Shamilat land.

(1) *Forfeiture of rights in—Failure to contribute towards expenses incurred in recovering shamilat land from third party.*

The plaintiffs admitting that defendants had rights in shamilat land, claimed that the defen-

Shamlatland—(Concluded).

dants' right was extinguished, for failure on their part to contribute towards expenses, incurred by plaintiffs in recovering the land from third parties.

Held, that the claim was not valid. **Maula v. Khushia**, 166 P.L.R. 1906.

BATTIGAN & CHITTY, JJ.

Sham Transaction.

- (1) *Sale-deed—Transfer in name of vendee with intent to defeat a third person's right to inherit vendor, whether a sham transaction—Consideration for the sale, whether strangers can question.*

Basing his claim on a sale-deed from 1st defendant (the mortgagor), plaintiff instituted the suit for redemption. The mortgagee was the second defendant. 1st defendant died pending the suit and his daughter (the fourth defendant) was brought on record as his representative. In the Court of first instance, defendants 2 and 4 set up the defence that the sale deed to the plaintiff was not really intended to transfer the property to him but was executed by the first defendant merely with the object of depriving his daughter of the said property. The lower Courts found that the sale to the plaintiff was a sham transaction not really intended to convey any property but merely created with intent to defraud the fourth defendant of her title to inherit the property after the life-time of the first defendant. *Held*, if depriving his daughter of the property in question were the motive which actuated the first defendant, it would follow that he had an intention of transferring the property to the plaintiffs and, consequently, the sale-deed was not anything that could be termed a sham transaction but, on the other hand, it effectively transferred the property to the plaintiffs, who were, therefore, entitled to bring the suit for the redemption of the property and in such a suit by the vendee it was not open to the persons not parties to the sale-deed to question the consideration for the sale. **Chinnasamy Reddiar v. Krishna Reddy**, 16 M.L.J. 146.

SUBRAHMANYA AIYAR and MOORE, JJ.

Shares.

—in a company, a *wakf* cannot be created of—See **MAHOMEDAN LAW (WAKF)**, No. 1, 10 C.W.N. 449.

See, also, I, Company, No. 4.

Shebait.

See I, Hindu Law (Religious Matters), No. 1.

Sheikhs of Mulana.

See I, Custom (Punjab), No. 16.

Ship.

Right to share in, without registered bill of sale—See **MERCHANT SHIPPING ACT**, No. 1, 1 M.L.T. 407A.

Shops.

Custom of pre-emption on sale of, obtaining in Amritsar—See **PRE-EMPTION**, No. 47, 113 P. R. 1906.

Signature.

What is the meaning of—and how is it to be effected—See **TRANSFER OF PROPERTY ACT**, No. 41, 4 C.L.J. 41.

Sir land.

See I, Adverse Possession, No. 2.

Slander.

- (1)—*whether actionable without proof of special damage—Damages, amount of, question of fact—Second appeal.*

Where the abusive language used is such that, having regard to the respectability and position of the person abused, it is calculated to outrage his feelings or lower the estimation in which he is held by persons of his own class and so bring him into disrepute, the slander is actionable without proof of special damage.

A charge of adultery against a respectable man is such a slander.

The question of the amount of damages is a question of fact and it is not open to the High Court to interfere in second appeal upon a question like that. **Jogeswar Sarma v. Dinaram Sarma**, 3 C.L.J. 140.

BANERJEE and WILKINS, JJ.

See, also, I, 851.

Slander of Title.

See TRADE MARK, No. 2, 10 C.W.N. 107 = 4 C. L.J. 268.

See, also, I, 852.

Small Causes Court.

Jurisdiction of High Court to stay proceedings in,—Reference to arbitration—See **ACT IX OF 1899 (INDIAN Arbitration)**, No. 3, 8 Bom. L.R. 955.

See, also, I, Judgment, No. 1.

Small Cause Court (Moffussil).

Suit for balance due on a partnership account—Addition of prayer for declaration of dissolution of partnership—Jurisdiction—See **SMALL CAUSE COURTS, PROVINCIAL ACT (IX OF 1887)**, No. 6, 28 A. 298.

Small Cause Courts (Presidency).

See ACT XV OF 1882.

Small Cause Courts (Presidency towns).

High Court's power to revise proceedings in the Bombay Court of Small Causes—See **CIV. PRO. CODE**, No. 332, 8 Bom. L. R. 969.

Small Cause Courts Act XV of 1882 (Presidency).

Power of, to set aside *ex parte* order—See **CIV. PRO. CODE**, No. 84, 8 Bom. L. R. 803.

Small Cause Courts, Provincial Act (IX of 1887).

Ss. 15 and 32 and Art. 8—See I, 853, No. 2.

(n) *S. 16—Small cause suit tried as ordinary suit by both the lower Courts, effect of—High Court's powers of interference—Civ. Pro. Code, S. 646 B.*

Where both the lower Courts tried a small cause suit as an ordinary suit, and the lower Appellate Court directed the plaintiff to pay the defendant's costs, the decree of the District Judge must, notwithstanding S. 16 of Act IX of 1887, be treated as effective, so as to enable the defendant to recover the amount of costs; and the High Court, in the exercise of its discretion, will decline to interfere in revision (a).

S. 646 B of the Code is an enabling section and does not cut down the jurisdiction of the appellate tribunal. **Sri Raja Simhadri Appa Rao Bahadur, Minor, by his guardian Sri Raja Ramachandra Appa Rao Bahadur v. Chelasane Bhadrappa**, 1 M.L.T. 414.

WHITE, C.J.

References :—(a) 21 M. 239; 27 M. 479, 25 A. 135, R.

(1) *S. 17—Application to set aside an ex parte decree : Provisions as to depositing decree amount or furnishing security whether mandatory or merely directory.*

Petitioner had presented an application to set aside an *ex parte* decree against him, which was rejected on the ground that he had not complied with the provisions of S. 17 of the Provincial Small Cause Court's Act, 1887, as to either depositing the decree amount in Court or giving security for the performance of the

Small Cause Courts Provincial Act (IX of 1887).

—(Continued).

decree. It was to revise that order of rejection that the present petition was put in, on the ground that the provisions of the section should be regarded as directory and not mandatory, *Held*, the provisions contained in the section form a condition precedent and are to be strictly construed. Enactments regulating the procedure in Courts seem usually to be imperative and not merely directory. S. 21 of the Repealed Act of 1865 contained somewhat similar provisions to those in question and they were always regarded as mandatory (a). The contention for the petitioner may appear to find support in the decision of the Madras High Court in *Ramdasami v. Kurisu* (b); but that decision has been rightly dissented from by the Calcutta High Court in *Joginahr v. Bishen Dayal Singh* (c). **Umrao Jiwan Patel v. Munnumian Musalman**, 2 N.L.R. 23.

ISMAY, J.C.

References.—(a) 5 Bom. H.C.R. 70, and 14 W.R. 42, R. (b) 13 M. 178, *doubted*. (c) 18 C. 83, F.

(2) *S. 17, application to set aside an ex parte decree—subsequent deposit of decretal amount—defect not cured.*

The deposit of the decretal amount or the furnishing of the security under S. 17 of the Act is a condition precedent to the entertaining of the application to set aside an *ex parte* decree. The defect is not cured by subsequently depositing the decretal amount. **Jagannath v. Chet Ram**, 3 A.L.J. 318 = A.W.N. (1906), 98—28 A. 470.

BANERJI and RICHARDS, JJ.

S. 17, Sub. sec. 1—See I, 853, No. 1.

(3) *S. 23, discretionary power of Court under, to return plaint to be presented to proper Court—Competency of latter Court to try suit.*

Under S. 23 of the Act, a Small Cause Court has discretionary power to decline to exercise jurisdiction in matters involving questions of title, which such Court cannot finally determine. The effect of the exercise of such discretion and the consequent return of the plaint to be presented to a Court having jurisdiction to determine such title, is, to give the latter Court jurisdiction to try the small cause suit, so returned, as an original suit, notwithstanding anything in S. 16 of the Act. **Subbaroyadu v. Gangayya**, 29 M. 329.

Small Cause Courts Provincial Act (IX of 1887).
—(Continued).

BENSON and MOORE, JJ.

Reference.—23 C. 425, F.

S. 25—See I, 854, Nos. 3rd and 4.

S. 27—See I, 855, No. 5.

Exceptions 2 and 3, Sch. II—See I, 855, No. 6.

(4) Art. 8, Sch. II—Jurisdiction—Suit for rent.

A suit against the defendants who had executed a bond in favor of the plaintiff, undertaking to pay a debt due from their landlord, is not a suit for rent and is therefore cognizable by a Court of Small Causes. **Hriday Nath Poddar v. Joyram Mahto**, 4 C.L.J. 402.

MOOKERJEE, J.

Reference :—27 C. 827 (F.B.), D.

(5) Arts. 11 and 21—Suit cognizable by Court of Small Causes—Execution purchaser—Suit to recover refund of purchase-money—Civ. Pro. Code (Act XIV of 1882), S. 315.

A suit brought by an execution purchaser of immovable property, under S. 315 of the Civ. Pro. Code, 1882, for recovery of his purchase-money on the ground that the judgment-debtor had no saleable interest therein, is one cognizable by a Court of Small Causes. **Abdulbhai Chhotambhai v. Nathia Parahottam**, 8 Bom. L.R. 309.

JENKINS, C.J. and ASTON, J.

Art. 13, Sch. II—See I, 856, No. 7.

Arts. 13, 15, 18—1, Civ. Pro. Code, No. 308.

(6) Art. 19—Jurisdiction—Suit for balance due on a partnership account—Addition of prayer for declaration of dissolution of partnership—Civil Procedure Code, S. 646 B.

Where a plaint asked in effect for the recovery of a balance alleged to have been struck on the winding up of a partnership: *Held*, that the fact that a prayer for a declaration that the partnership had been dissolved was added did not oust the jurisdiction of the Court of Small Causes.

Held, also, that, when a reference is made to the High Court under S. 646 B of the Code of Civil Procedure, the Court, which makes it, should state its reasons for considering the opinion of the Subordinate Court with respect to the nature of the suit to be erroneous. **Ghotu v. Jawahir**, A.W.N. (1906), 29 = 3 A. L.J. 23 = 28 A. 293.

Small Cause Courts Provincial Act (IX of 1887).
—(Continued).

BANERJI and RICHARDS, JJ.

Art. 20, Sch. II—See I, Civil Pro. Code, No. 179.

(7) Art. 21—See No. 5, supra.

Art. 28—See I, 856, No. 10.

(8) Art. 31, Sch. II—Suit cognisable by Court of Small Causes—Practice and Procedure—Appeal.

A suit to recover his share of profits of immovable property, which the plaintiff alleges the defendant to have wrongfully received but as to which the plaintiff claims a definite sum, is a suit falling within the cognisance of the Court of a Small Causes. **Girjabai Bhratar Ghangadhar v. Raghunath alias Tatya**, 7 Bom. L.R. 741 = 30 B. 147.

RUSSELL and BATTY, JJ.

Art. 31—See I, 856, 857, Nos. 11 & 12.

(9) Applicability of Art. 31, Sch. II—Suit for rent by a divided coparcener against his co-parcener and the tenant, cognisable by Small Cause Court.

First defendant was a tenant of the joint family composed of second defendant and the plaintiffs. On partition between the plaintiffs and second defendant, a certain proportion of the family lands fell to the share of the former, who instituted the present suit for the rent due on that proportion making the second defendant also a party, because the lease deed stood solely in his name and because he was alleged to be bound to pay plaintiffs their share of the rent in case the first defendant be not found liable. *Held*, that the suit was substantially one for rent and so cognizable by a Small Cause Court and did not fall within Art. 31 of the Second Schedule, as "a suit for the profits of immovable property belonging to plaintiff, which have been wrongfully received by the defendant." **Srinivasa Raghava Ayyangar v. Pichalkaran**, 29 M. 184.

DAVIES and BODDAM, JJ.

(10) Art. 35 (i) Sch. II.—Compensation for diversion of watercourse, suit for, whether cognizable by a Small Cause Court—Appeal from suit lies to divisional Court and not District Judge—S. 39 (a), Punjab Courts Act, 1884—

Small Cause Courts Provincial Act (IX of 1887).

—(Concluded).

This was a suit instituted for compensation for diversion of a water-course, which, but for the forcible obstruction thereof caused by the defendant, would have flowed over to the plaintiff's land. Upholding the contention raised in revision, it was *held* that the claim was one covered by art. 84 (i) of the Act and was, therefore, not cognizable by a Small Cause Court. *Held also*, that, the suit being an unclassified suit of more than Rs. 100 in value, an appeal in the case would lie not to the District Judge but to the Divisional Court under S. 39 (a) of the Punjab Courts Act, 1884. **Lehna Singh v. Hira Singh**, 134 P.R. 1906.

LAL CHAND, J.

References:—18 M. 28, F. 71 P.R. 1896, R.

(11) Art. 35 (J)—Second appeal—Suit for recovery of money paid.

Where a suit is merely for the recovery of money paid, but not for compensation for illegal, improper or excessive distress or attachment, the suit is one of a small cause nature and there is no second appeal therefrom; such a suit does not come under Art. 35 (J) of the Act. **Senthivelu Mudaliar v. Varadachariar**, 16 M.L.J. 353.

MOORE and SANKARAN NAIR, JJ.

Art. 34—See I, 857, No. 13.

(12) Art. 41, Sch. II—Small Cause Court—Jurisdiction—Suit for contribution arising out of satisfaction of a joint decree for costs.

Held, that a suit by one of several joint judgment-debtors, who had satisfied a joint decree for costs, for contribution against the other joint judgment-debtors was not a suit exempted from the jurisdiction of a Court of Small Causes. **Bhairon v. Ram Baran**, A.W. N. (1906), 6=3 A.L.J. 6=28 A. 292.

BANNERJI and RICHARDS, JJ.

Reference.—15 C. 718, F.

Small Cause Suit.

(1) Suit for rent and for a declaration as to the propriety of *patta* granted to tenant—Second appeal—See CIV. PRO. CODE, No. 813, 1 M.L. T. 814.

(2) Trial of, as ordinary suit by lower Courts, effect of—High Court's powers of interference—See SMALL CAUSE COURTS, PROVINCIAL ACT (IX of 1887), No. 0, 1 M.L.T. 414.

See, also, I, 857, 858; and Civil Pro. Code, No. 43.

Societies Registration Act.

See under ACT XXI OF 1860 (IMPERIAL).

Solicitor's Lien.

See I, 858.

Sonthal Pergannas.

See I, 858.

Sovereignty.

Imputation of, constitutes defamation—See DEFAMATION, No. 2, 4 C.L.J. 390.

Sovereign Powers.

(1) *Kathiawar State—Whether British territory—Relation of British India with Native States, how ascertained—Sovereign powers of the Governor of Bombay in Council—Exercise in Native States through Political Agent—Courts of Political Agent and Assistant Political Agents, if King's Courts—Function of Governor in Council on appeal, whether judicial—Appeal to Privy Council.*

The rights and powers of control possessed and exercised over the Native States in India by the British Indian Government, with the corresponding restrictions upon the independent action of those States, are, to some extent, the necessary consequence of the suzerainty vested in the predominant power. But apart from this general source, rights of very varying kinds have been acquired in connection with the several States, from other sources.

Such rights differ not only in origin but in kind and in degree in the cases of different States, so that in each instance in which the nature or extent of such rights becomes the subject of consideration, enquiry has to be made into the circumstances of the particular case (a).

On a review of the relation of Kathiawar States and their people to British India, and the character of the control exercised by the British Indian Government over those States and particularly with relation to the administration of Justice:

Held, that the Kathiawar States are not included within the King's dominions.

Large as has been the political control exercised over them, any assertion of territorial sovereignty has been avoided. No legislative power over them has ever been claimed. The intervention in their affairs has never been carried farther than was judged necessary, in the emergency, for the maintenance of peace, good

Sovereign Powers.—(Continued).

order and security. The position of the Chiefs has always been respected; and, at least, in the case of the more important among them, many of the functions commonly regarded as attributes of sovereignty have been preserved to them. The form adopted in establishing and regulating tribunals in the province has been that which was regular and appropriate if it was not British territory, but quite irregular and inapplicable if it was (b).

If a Court, administering justice on the King's behalf, makes an order, judicial in its nature, by which some one is injuriously affected, the person aggrieved is not precluded from applying to the King in Council to redress his wrong merely by the fact that he is not the King's subject.

The jurisdiction, exercised by the Courts of the Assistant Political Agents and the Political Agent in Kathiawar, and by the Governor of Bombay in Council on appeal, is political and not judicial.

No appeal lies to His Majesty in Council from the Courts in Kathiawar or from the decision of the Governor of Bombay in Council on appeal. **Hemchand Devchand v. Azam Sakarial Chhotamial and The Taluka of Kotda Sangani v. The State of Gondal**, 10 C.W.N. 361 = 8 Bom. L.R. 129 (P.C.) = 3 A.L.J. 250 = 38 C. 219 = 8 C.L.J. 395 = 16 M.L.J. 115 = 1 M.L.T. 115.

LORD CHANCELLOR LORD MACNAGHTEN,
LORD DAVEY, LORD JAMES OF HEREFORD,
LORD ROBERTSON and SIR ARTHUR
WILSON.

References.—(a) 24 I.A. 137 = 2 C.W.N. 1, R.
(b) L.R. 1 A.C. 322, explained.

(2)—*The supreme and sole head on matters ecclesiastical—The thanthri in state temple, the position of.*

The *thanthri* of a state temple is the ecclesiastical referee of the Government in matters of ritual's in the temple, but, his function is to be restricted to the duties of an adviser to the Government, owning the temple and possessing the supreme and administrative authority in all the temple affairs. The ecclesiastical, as well as the temporal, head of the state is the Sovereign, whose power it is, that always puts in execution any opinion of the *thanthri*, who cannot, therefore, claim any jurisdiction independent of, and paramount to, the Sovereign

Sovereign Powers.—(Concluded).

power of the Maharajah. **Krishnan Krishnan Namburi v. The Diwan of Travancore**, 21 T. L.R. 211.

GOVINDA PILLAI & RAMACHANDRA ROW, JJ.

Sovereign Prince.

See I, Civil. Pro. Code, No. 249.

Specific Performance.

(1) *Specific performance of contract of sale entered into before passing of Punjab Alienation of Land Act (XIII of 1900) not barred by the Act.*

Held, that a suit for specific performance of a contract of sale of land, entered into before the date the Punjab Alienation of Land Act came into force, filed after that date, is maintainable and possession of the land can be allowed to the plaintiff without regard to the provisions of the Act. **Harl Chand v. Bura Mal**, 27 P.L.R. 1906.

CHATTERJI and CHITTY, JJ.

(2) *Suit for, delay short of limitation in the institution of, when bars the relief.*

In a suit for specific performance of an agreement to sell certain premises to plaintiff, the question arose whether the delay on the plaintiff's part, in the institution of the suit, was evidence of abandonment by plaintiff of his admitted rights under the agreement. *Held*, delay is not material, so long as matters remain in *statu quo* and it has neither prejudiced the defendant, nor amounted to a waiver of the plaintiff's right by acquiescence. In such cases, any lapse of time, short of the period allowed under the Limitation Act, cannot disentitle the plaintiff to the proper relief.

Further, the defendants, in this case, having failed to establish abandonment of plaintiff's admitted rights, the onus of proving which lay upon them, any delay, on the plaintiff's part short of the period of limitation, could not be held to deprive him of his right to a decree for specific performance. **Kissen Gopal Sadaney v. Kally Frozonno Sett**, 33 C. 633.

WOODROFFE, J.

Reference.—2 B. 139, R.

(3) *Conveyance, registered and, delivered, if operative—Consideration not paid, effect of—Agreement to sell—not enforceable—Limitation.*

Specific Performance.—(Concluded).

If A executes a conveyance in favour of B by way of *mokarari*, and the document is registered and delivered, it is operative, even though it is proved that the consideration agreed upon has not been paid. Its validity cannot be questioned by a third party.

A agreed to sell property to X and, subsequently, conveyed it to B, who took with notice of the prior contract. X obtained a decree for specific performance against A, but did not make B party to the suit; X then sued B to recover possession.

Held, that X had no enforceable title as against B, because, at the date of the institution of the suit, his equitable right had been barred by limitation. **Manogi Singh v. Sarat Lal Mahto**, 4 C.L.J. 334.

RAMPINI and GUPTA, JJ.

(4) Decree upon a compromise for execution of a conveyance to be proceeded with as a decree for specific performance—See EXECUTION OF DECREE, No. 2, 10 C.W.N. 345.

(5) Contract by certificated guardian on behalf of minor for sale to plaintiff—Subsequent sale to a third person—Suit by plaintiff for—See GUARDIAN AND WARD, No. 1, 10 C.W.N. 763.

See, also, I, 859-862; *Contract*, Nos. 7 and 8; *Specific Relief Act*, Nos. 10, 12 and 13.

Specific Relief Act (I of 1877).

(1) S. 9—Ouster of trespasser without recourse to law—Decree under—obtained by trespasser—Suit for title by owner—Limitation—Starting point—Limitation Act (XI of 1877), Sch. II, Art. 142.

Where a rightful owner of lands was dispossessed, but succeeded in ousting the trespasser without recourse to law, and continued in possession, until dispossessed under a decree obtained by the trespasser under S. 9 of the Specific Relief Act.

Held,—That possession so obtained by the rightful owner was possession within the meaning of Art. 142, Sch. II, Limitation Act. **Jopab Sheikh v. Maharaja Suraya Kant Acharyya**, 10 C.W.N. 1081=33 C. 821.

GHOSH, C.J. and CASPERSZ, J.

References.—2 C.L.J. 1, 9 C.W.N. 1061, F.

(2) S. 9.—Suit for possession on possessory title of plaintiffs' predecessor—Plaintiffs never

Specific Relief Act (I of 1877).—(Continued).

themselves in possession. See POSSESSION, No. 4, A.W.N. (1906), 264.

S. 9—*See, also*, I, 862 & 863, Nos. 1 to 3; and *Limitation Act*, No. 112.

S. 12—*See* I, *Contract*, No. 7.

S. 18—*See* I, *Specific Performance*, No. 6.

S. 18. cl. (c)—*See* I, 863, No. 6.

Ss. 19 and 21 (g)—*See* I, *Contract*, No. 8.

(3) S. 21—Suit for damages for breach of contract—agreement to refer to arbitration any dispute arising under the contract.

Plaintiff sued for damages for breach of a contract. The defence was that the suit was unsustainable, on the ground that there was a stipulation in the contract in question, to refer the dispute arising thereunder to arbitration, and that the plaintiff ought not to have sued in the face of that stipulation. There was no evidence to show, either that the defendant proposed to refer to arbitration before the suit was brought or that the plaintiff refused to proceed to arbitration. *Held*, that S. 21 of the Specific Relief Act can be relied on as bar to a suit on a contract, only in case of a refusal by plaintiff to refer the dispute to arbitration, and that, in this case, no such refusal on the part of the plaintiff having been proved, the defence was unsustainable. **Ralli v. Walaiti Ram**, 80 P.R. 1906.

CHITTY, J.

References.—5 C. 498 and 5 C.L.R. 284, F.

See, also, I, 863, No. 9 and *Jurisdiction (Civil Courts)*, No. 13.

S. 21(a)—*See* I, 864, No. 10.

S. 22—*See* I, *Contract Act*, No. 6.

(4) S. 23 (c) —Partition deed beneficial to minor member of joint Hindu family—His right to sue on the deed. *See* HINDU LAW (PARTITION), No. 6, A.W.N. (1906), 261.

(5) S. 30—Maintainability of suit under, to enforce an award made out of Court.

Where a reference to arbitration and an award thereon were made, under proceedings out of Court, during the pendency therein of legal proceedings, it was *held*, that it was competent for a party to it to enforce the award by means of a suit under the provisions of S. 30 of the Specific Relief Act; and the fact that the matter of the arbitration and the award thereon was kept back from the knowledge of the Court, till the determination of the proceedings

Specific Relief Act (I of 1877).—(Continued).

pending therein, could make no difference. **W, Wathawa alias Nga Tun Min v. Nga Po?** U.B.R. Specific Relief, 30.

SHAW, J.C.

References:—24 W.R. 41, 4 M.H.C.R. 119, 15 M. 99, 19 M. 290 & 20 M. 490, R.

- (6) S. 31—*Terms which the parties to a document intentionally omitted to insert therein—Whether the document may be rectified in respect of such terms.*

Where the parties to a contract deliberately omitted certain terms relating to it, from the deed embodying the contract, under the mistaken idea that, though oral and excluded from the deed, those terms could be enforced, to hold that subsequent resiling by one of the parties entitles the other to rectification of the deed would be to depart from the express terms of S. 31, of the Act, to nullify the provisions of S. 92, Indian Evidence Act, and to overlook the presumption that every one is supposed to be acquainted with the law. There can be no rectification, if it was by the intention of the parties that the written instrument did not comprise all the terms of the actual agreement, since that party, who deliberately and gratuitously ran the risk involved in trusting to the other's honour must continue to abide by such previous determination. The Court cannot, and ought not to, interfere for the rectification of such an instrument by the introduction, into it, of the intentionally omitted terms because what is done on purpose is evidently not done by mistake. **Latchman Rao v. Ganpat Rao**, 2 N.L.R. 49.

DRAKE-BROCKMAN, A.J.C.

- (7) S. 31—*Relief on the ground of mistake—Mutual mistake—Rectification of instruments.*

To establish a right to rectification of a document it is necessary to show that there has been either fraud or mutual mistake.

To afford a relief on the ground of mutual mistake, under the terms of S. 31 of the Act, it is necessary that the Court should find it clearly proved that there was such mistake.

It is clear that a person, who seeks to rectify a deed upon the ground of mistake, must be required to establish, in the clearest and most satisfactory manner, that the alleged intention to which he desires it to be made conformab

Specific Relief Act (I of 1877).—(Continued).

continued concurrently in the minds of all parties down to the time of its execution, and also must be able to show exactly and precisely the form to which the deed ought to be brought. For there is a material difference between setting aside an instrument and rectifying it on the ground of mistake. In the latter case, one can only act upon the mutual and concurrent intention of all parties for whom the Court is virtually making a new written agreement. **Madhavji Bhanji v. Rammath Dadoba**, 8 Bom. L.R. 354 = 30 B. 457.

JENKINS, C.J. and RUSSELL, J.

See, also, I, 865, No. 13.

- (8) S. 39, suit under—whether which party is in possession, if material—See Civ. Pro. Code, No. 113, U.B.R. (1905), Civ. Pro. Code, 36.

See, also, I, Civil Pro. Code, No. 256; Court Fees Act, No. 2 and Limitation Act, No. 73.

- (9) S. 42—*Declaratory suit, for declaration that defendant is not the adopted son of the plaintiff—Maintainability—*

Where an adoption alleged to have been made by the plaintiff has been set up under circumstances, which would operate to the prejudice of the plaintiff, if he did not take steps to have it declared not true, there is such an infringement of the plaintiff's rights, if he is a sole owner, as to entitle him to sue for, and obtain, a declaration that the defendant, the alleged adoptee was never taken by him, the plaintiff, in adoption. To enable plaintiff to institute such a suit, it is not necessary that the claim must have been set up by the adoptee himself as by his having said or done anything with reference to the adoption. **Chinnasawmy Mudalliar v. Ambalavana Mudalliar**, 29 M. 48.

SUBRAHMANYA AYYAR, OFFG. C.J. and SANKARAN NAIR, J.

- (10) S. 42—*Rights of a Hindu daughter, a next reversioner, to sue for construction of will of father and for declarations incidental thereto.*

A Hindu daughter is entitled, during the life time of her mother, to maintain a suit for the construction of a will of her deceased father and declaration incidental thereto, especially where the mother has allowed her rights, if any, to be barred by limitation and where the immediate conduct of the executors will be determined by the construction.

Specific Relief Act (I of 1877).—(Continued).

A suit for the construction of a will is maintainable only when some immediate necessity for the construction is established: "perpetuation of testimony" is not the only ground on which declaratory suits of this description are allowed (a). **Srinibash Das v. Monmohini Das**, 8 C.L.J. 224.

* **RAMPINI and MOOKERJEE, JJ.**

References.—(a) L.R. 2 I.A. 169, 15 B.L.R. 83, 4 Ch. D. 413, 27 Ch. D. 297, 45 Ch. D. 51, D., and 29 C. 200, 32 C. 62, 8 B.L.R. A.C.J. 362, 24 W.R. 86 (note), F'.

(11) S. 42—*declaration of right—Consequential relief—injunction not asked for.*

Where the defendant interferes, with the plaintiff's right in building upon a piece of land on the ground that he (defendant) is a joint owner, the plaintiff is entitled to bring a suit for a declaration that he is the exclusive owner and need not ask for an injunction to restrain the defendant from interfering with his right. **Sundar Lal v. Ram Ghulam**, 3 A.L.J. 316 = A.W.N. (1906), 149.

AIKMAN, J.

Reference.—15 M. 15, I.

(12) S. 42—*Suit under S. 283, Civ. Pro. Code maintainability of, when no further relief is asked for*—See CIV. PRO. CODE, No. 163, 20 M. 151.

(13) S. 42—*See CUSTOM (PECULIAR TO PUNJAB)*, No. 37, 72 P.R. 1906.

(14) S. 42—*Maintainability of suit in Civil Court for declaration that plaintiff is entitled to get from his co-sharer the amount due from him, on account of the arrears of revenue*—See ACT XXII of 1886 (ODH RENT), No. 2, 9 O.C. 232.

See, also, I, 866-870; and Hindu law (Reversioners), Nos. 2, 4, 6 & 10, Limitation Act, No. 97; Mortgage (Miscellaneous), No. 15.

(15) Ss. 42, 45—*Municipality—Election—Omission of a candidate's name from the candidate's list prepared by the Receiving Officer—Suit for declaration and injunction.*

A Receiving Officer appointed by the Collector under the election rules refused to accept the nomination paper of the plaintiff, a candidate at a by-election for a councillorship of the **Surat City Municipality**, and the list of candidates that was published omitted plaintiff's

Specific Relief Act (I of 1877).—(Concluded).

name from it. The plaintiff, thereupon, sued the Municipality for a declaration that he was entitled to come forward as a candidate and for an injunction to prevent the Municipality from carrying on the by-election without accepting plaintiff as a candidate;

Held, (1) that the suit for declaration failed since the Municipality neither denied nor was interested to deny, the character or right which the plaintiff sought to establish. It was the Receiving Officer that was concerned with the question and over him the Municipality had no control;

(2) that the claim or injunction too could not be sustained, since the Municipality had done no wrong and was threatening to do no wrong; it only proposed to proceed in accordance with the Act and the Rules so far as they related to it. **The Surat City Municipality v. Chunilal Maniklal Gandhi**, 8 Bom. L.R. 209 = 30 B. 409.

SIR LAWRENCE JENKINS, C.J. and ASTON, J.

(16) S. 45—*See No. 15, supra.*

See, also, I, 870, No. 30.

(17) S. 55—*Mandatory injunction—Suit for demolition of buildings—Delay in suing—Damage.*

The plaintiff sued (*inter alia*) for the demolition of a building erected on property which has been found to belong jointly to the parties. The suit was instituted about a year and a half after the completion of the building, but the lower appellate Court had found that the plaintiff, though he lodged no complaint, had, from the first, protested against the erection and that the building blocked one of the lower doors of the plaintiff's house.

Held, that the circumstances of the case did not warrant interference with the mandatory injunction granted by the lower appellate Court in the plaintiff's favour (a). **Raja Ram v. Moti Ram**, A.W.N. (1906), 221.

AIKMAN, J.

References.—(a) A.W.N. (1901), 53; 30 C. 901, D.

(18) S. 55—*Mandatory injunction to compel removal of building constructed by a stranger on plaintiff's land*—See INJUNCTION, No. 2, 2 N.L.R. 4.

Spes Successionis.

Transferability and releasability of—Transfer of Property Act, S. 6 (a)—See **MAHOMEDAK LAW (SUCCESSION)**, No. 2, 8 Bom. L.R. 781.

Stamp.

(1) Reference to Chief Court on questions of, when may be made—See **STAMP ACT (II OF 1899)**, No. 7, 181 P.L.R. 1906.

(2) Mode of cancellation of adhesive—See **STAMP ACT (II OF 1899)**, No. 4, A.W.N. (1906), 95.

Stamp Act (II of 1899).

S. 2 (5) (b)—See I, 871, No. 1.

(1) S. 2 (5) (c)—*Bond—Agreement of sale between two merchants—Attestation.*

An ordinary agreement for sale of cotton between two merchants, when attested by a witness becomes a bond within the meaning of the Indian Stamp Act, 1899. *In re Ralli Brothers*, 8 Bom. L.R. 194.

JENKINS, C.J. and RUSSELL and ASTON, JJ.

S. 2, cl. 15—See I, 871, No. 2.

S. 2, cl. 15, Sch. I, art. 45—See I, Civil Pro. Code, No. 51.

(2) S. 2, cl. 15, Art. 45 (c)—*Instrument of partition—Award directing a partition—Stamp.*

An award, whereby the arbitrators indicate the division of property among the rival litigants, is an instrument of partition, within the meaning of S. 2, cl. 15 of the Act. *Kalidas Lalbhai v. Tribhuwandas Bhagwandas*, 8 Bom. L.R. 869.

RUSSELL, AG. C.J., and BEAMAN & HEATON, JJ.

(3) S. 4—*Sale of land—Mortgage of the land sold executed by the purchaser, duty chargeable on.*

In answer to a reference to the Full Bench under S. 57 (1) of the Act, it was held, that a document whereby a purchaser transferred to his vendor, by way of mortgage, an interest in the land sold, is not an 'instrument employed for completing' the sale of the property and the deed is, therefore, chargeable with the full amount of duty appropriate to the description of the mortgage under which it comes, specified in Art. 40 of Sch. I of the Act. *Reference under Stamp Act 1899, No. 12 of 1905*, 3 L.B.R. 205 (F.B.)

FOX, C.J. & IRWIN and HARTNOLL, JJ.

(4) S. 12—*Stamp—Promissory note—Stamp not cancelled—Evidence of consideration for debt aliunde admissible.*

Stamp Act (II of 1899).—(Continued).

Plaintiff sued for the recovery of a loan secured by a promissory note. When the promissory note was produced in Court, it was found that the stamp on it had not been cancelled, and it was therefore treated as an unstamped document and the Court refused to allow other evidence to be given of the debt. *Held*, that the evidence of the debt was admissible *aliunde*.

When a cause of action for money is once complete in itself, whether for goods sold or money lent or for any other claim, and the debtor then gives a bill or note to the creditor for payment of the money at a future time, the creditor, if the bill or note is not paid at maturity, may, always as a rule, sue for the original consideration, provided that he has not endorsed or lost or parted with the bill or note under such circumstances as to make the debtor liable upon it to some third person. *Banarsi Prasad v. Fazal Ahmed*, A.W.N. (1906), 9=3 A.L.J. 25=28 A. 298.

STANLEY, C.J. and KNOX, J.

Reference.—7 C. 256, F.

(5) S. 12—*Stamp—Mode of cancellation of adhesive stamp.*

A person who cancels an adhesive stamp affixed to a document does so sufficiently if he writes his name across it. It is not necessary that he should also date the stamp. *Kirpa Ram v. Baru Mal*, A.W.N. (1906), 95=3 A.L.J. 326.

HANERJI, J.

S. 24—See I, 871, No. 5.

(6) S. 35—*Unstamped promissory note, inadmissibility of, in evidence—Suit whether maintainable on the verbal agreement embodied in the note—Admission of execution of a deed is not the same as admission of a liability thereunder.*

Plaintiff sued to recover money from the defendant, alleging that defendant had executed a pro-note in his favour on account of rent due, and that, as the said pro-note was not properly stamped, he claimed the same as a debt due under a prior book account. The suit, as based on such account, was admittedly barred by limitation at the date of its institution. It was contended on appeal that the suit was maintainable on two other grounds, viz :—

(1) When the pro-note was executed, the defendant had agreed verbally to pay the mountain question on a certain date and that

Stamp Act (II of 1899).—(Continued).

limitation, therefore, began to run from that date.

(2) Plaintiff could rely upon defendant's admission of the execution of the pro-note, leaving it to him to prove the repayment of the amount.

Keld (1) as the oral agreement was, on the same day, embodied in a written agreement (pro-note), the pro-note alone can supply the evidence of the agreement, and (a) the latter cannot be proved *aliunde* (S. 91, Evidence Act); (2) the admission as to the execution of the deed could not be relied on, in respect of the liability thereunder. Under these circumstances, granting plaintiff a decree would be 'acting upon' and giving effect to the pro-note, a document, which, under S. 35 of the Stamp Act, could not be admitted and acted upon by a Court for any purpose (b). **Ganga Ram v. Amir Chand**, 66 P.B. 1906.

JOHNSTONE and RATTIGAN, JJ.

References.—(a) 24 B. 360, F.; 20 P.R. 1883. R. (b) 18 B. 369 and 21 B. 201 (F.B.), F.

(7) *Ss. 35, 38, 40, 60—Stamp—Reference to Chief Court, when may be made—Powers of Court as to documents not put in evidence—Adjudication by Collector binding on Courts.*

The reference under S. 60 of the Act can only be made under the circumstances specified in it. The Judge must feel doubt as to the amount of duty to be paid in respect of any instrument under proviso (a) to S. 35.

S. 60 does not deal with a case, where reference has been made to a Collector and his adjudication obtained.

Where a suit is dismissed without being called to hearing, no reference can be made as to a document produced in Court by the plaintiff with his plaint.

A Court has no power to overhaul an account-book, produced in a case, for the purpose of putting in evidence an entry contained in it and take action under the Stamp Act in regard to entries not put in evidence.

A Court acts without jurisdiction in calling upon a party to produce his account-book in Court and to impound the same, when there is no case before the Court.

Under S. 40 (a) of the Stamp Act, the adjudication of the Collector as to the amount of duty

Stamp Act (II of 1899).—(Concluded).

chargeable on an instrument is final and cannot be questioned by Courts.

The Chief Court declined to entertain the reference, submitted by the District Judge, as made in contravention of the provisions of S. 60 of the Stamp Act. **Mussammatt Jai Devi v. Gokal Chand**, 131 P.L.R. 1906 (F.B.).

CHATTERJI, JOHNSTONE AND LAL CHAND, JJ.

(7-a) S. 38—See No. 7, *supra*.

(7-b) S. 40—See No. 7, *supra*.

(7-c) S. 60—See No. 7, *supra*.

(8) *Art. 1, Sch. I—Stamp—Construction of document—Memorandum of account—Acknowledgment of debt—Admissibility of evidence.*

The plaintiff sued for the recovery of certain sums of money lent by her deceased husband to the defendants, a firm of bankers, and she produced in support of her claim two documents described in the lower Courts as "sarkhats." These were documents in the form of extracts from bankers' books, showing a 'credit and debit side and, in one case, a balance struck, but they were not signed by the parties or either of them, and they contained no acknowledgment of, or promise to pay, a debt. They were not stamped. *Held*, that these papers were merely memoranda which might be given in evidence for what they were worth, but did not require to be stamped (a). **Dulmha Kunwar v. Mahadeo Prasad**, A.W.N. (1906), 80=3 A.L.J. 242=28 A. 436.

STANLEY, C.J. and BURKITT, J.

Reference.—(a) 27 A. 84, R.

See, also, I, 872, No. 6.

Art. 15—See I, 872, No. 7.

Art. 58 A—See I, 872, No. 8.

(9) *Art. 45 (c)—See I, No. 2, supra.*

Standing Crops.

See I, *Limitation Act*, No. 43.

Standing Orders of Board of Revenue. (Madras).

S.O. No. 15, rules 4, 5, 7, 11, 13 & 14—See DARKHAST RULES, No. 1, 1 M.L.T. 278.

State.

See I, *Forest Lands*, No. 1.

Statutes 13, Eliz., c.5.

See I, *Transfer of Property Act*, No. 8.

Statutes 11 and 12, Vic., Ch. 21, S. 9.

See *I, Insolvency Act XI and XII, Vic. c. 21, No. 3.*

(1)—See *INSOLVENCY ACT (XI AND XII VIC., CH. 21), No. 1, 8 Bom. L.R. 648.*

(2) Right of person ordered to be examined as a witness under—to appear by Council to show that the order is prejudicial to his interests—See *INSOLVENCY, No. 1, 8 Bom. L.R. 85.*

Statutes 22 and 23, Vic., C. 4.

See *I, Landlord and Tenant, No. 19.*

Statutes 24 and 25, Vic.

See *I, Act XX of 1847, No. 2.*

Statutes 41 and 42, Vic., Ch. 42.

See under *INSOLVENCY ACT.*

Statutes 44 Vic., C. 12, S. 27.

See *PROBATE, No. 1, 8 Bom. L.R. 725.*

Stay of execution.

(1) See under *EXECUTION OF DECREE.*

(2) Powers of Indian Courts to order in case of appeals to the Privy Council—See *APPEAL (TO PRIVY COUNCIL), No. 1, 4 C.L.J. 101.*

Step in aid of execution.

(1) Application for withdrawal of money standing to the credit of a decree-holder is not a—See *LIMITATION ACT, No. 134, 3 C.L.J. 95.*

(2) Decree-holder certifying payment of money out of Court and filing a receipt therefor in Court is a—See *LIMITATION ACT, No. 142, 34 P.L.R. 1906.*

(3) Whether application for leave to bid is a—See *LIMITATION ACT, No. 144, 3 C.L.J. 240.*

(4) Application by judgment-creditor for payment of money in Court not realised in execution of the decree is a—See *LIMITATION ACT, No. 125, 10 C.W.N. 354 (F.B.)*

(5) Resisting application of judgment-debtor's application for insolvency not a—See *LIMITATION ACT, No. 138, A.W.N. (1906), 54.*

(6) Whether an application under S. 90 of the Transfer of Property Act is a—See *LIMITATION ACT (XV OF 1877), No. 138, 4 C.L.J. 141 = 33 C. 867.*

(7) Application by legal representatives of decree-holder to be brought on record, whether a—See *LIMITATION ACT, No. 143, 9 O.C. 281.*

Step in aid of execution.—(Concluded).

See, also, *I, Execution of Decree, No. 56; and Limitation Act, Nos. 132, 136, 142, 143 and 145.*

Stolen Currency Note.*

See *I, Contract Act, No. 27.*

Sub-mortgagee.

Right of—to bring to sale the original mortgagor's interest—See *MORTGAGE (GENERAL), No. 10, 9 O.C. 233.*

See, also, *I, 873, 874; and Transfer of Property Act, No. 69.*

Subordinate Courts.

Jurisdiction of, to try offences under cls. c to f, S. 18, Legal Practitioners Act. See *ACT XVIII OF 1979 (LEGAL PRACTITIONERS), No. 2, 3 A.L.J. 811.*

Sub-Settlement Act (Oudh).

See *ACT XXVI OF 1866 (OUDH).*

Sub-soil.

See *I, Landlord and Tenant, No. 16.*

Subsoil Rights.

Holder of mineral rights entitled to the incidental for boring into the land to ascertain if there are minerals underground—See *LESSOR and LESSEE, No. 1, 3 C.L.J. 103.*

Substituted service.

When—can be ordered—See *CIV. PRO. CODE, No. 67, 29 M. 324.*

Succession—See *CUSTOMS (PUNJAB).*

Succession Act (Indian).

See *ACT X OF 1865.*

Succession Certificate Act.

See under *ACT VII OF 1889 (IMPERIAL).*

Suit.

See *I, Civil Pro. Code, Nos. 55 and 229.*

Suit in ejectment.

See *I, Landlord and Tenant, Nos. 21 and 28.*

Suits Valuation Act.

See *ACT VII OF 1887.*

Summons.

(1) Service of—Signature or mark on—See *CIV. PRO. CODE, No. 69, 8 Bom. L.R. 584.*

(2) Civ. Pro. Code, S. 80—Service of—Practice—See *CIV. PRO. CODE, No. 71, 8 Bom. L.R. 757.*

Surety.

(1) Discharge of—by giving time to the principal judgment-debtors—See CONTRACT ACT, No. 39, 9 O.C. 28.

(2) Maintainability of application for execution against—when judgment-debtor has applied for insolvency—See LIMITATION ACT, No. 133, A.W.N. (1906), 54.

(3) Creditor's claim against principal debtor barred by time—Effect of such bar on the liability of the—See CONTRACT ACT, No. 38, 2 N.L.R. 42.

(4)—for performance of a decree passed before his entering into obligation—Whether decree can be executed against him—See CIV. PRO. CODE, No. 134, 8 Bom. L.R. 367.

(5)—guaranteeing payment of judgment-debt—Execution of decree against—when proper—See CIV. PRO. CODE, No. 201, 10 C.W.N. 830.

(6)—for temporary stay of execution—Discharge of—See CIV. PRO. CODE, No. 284, 8 Bom. L. R. 557.

(7)—under S. 545, Civ. Pro. Code, for due performance of appellate decree, whether liable to be proceeded against in execution—See CIVIL PROCEDURE CODE, No. 135, 109 P.R. 1906.

(8)—for performance of appellate decree, whether could be proceeded against by way of execution—See CIV. PRO. CODE, No. 287, 125 P.R. 1906.

(9) Decree passed against—and the judgment debtor—Application for execution against the judgment-debtor alone—Liability of—See LIMITATION ACT, No. 141, 8 Bom. L.R. 807.

See, also, *I, Act V of 1881 (Probate)*, No. 9; *Civil Pro. Code*, Nos. 130, 154 and 217; *Execution of Decree*, No. 93; and *Hindu Law (Debts)*, Nos. 3 and 4.

Tacking.

—of various periods of adverse possession—See ADVERSE POSSESSION, No. 7, 9 O.C. 230.

Tarwad.

(1) *Abkari contract held by Karnavan, whether a business of the, among the Kachhavas.*

Considering that persons, belonging to the *Kachhava* caste, usually follow the profession of toddy-drawing and toddy sales, an *Abkari contract held by a Karnavan of a Tarwad*, among them, would be regarded as a business conducted by him on behalf of the *Tarwad*, so that, when a debt acknowledged to have been borrowed by the *Karnavan*, for the purpose of such a contract, is sought to be impeached by

Tarwad.—(Concluded).

the other members, the onus is upon the latter to prove that the business carried on by the *Karnavan*, under the contract, was not one for the purposes of the *Tarwad*. *Mundan Raman v. Ramasubba Aiyar Kulathoor Aiyar*, 21 T.L.R. 41.

SADARIVA AIYAR, C.J., PADMANABHA AIYAR and RAMACHANDRA ROW, JJ.

(2) Debt contracted by junior managing member of *Tarwad*, proof of *Tarwad* necessity for—See MAMMAKATTAYAM LAW (ALIENATION), No. 1, 21 T.L.R. 296.

(3) Right of management of, whether could be exercised by senior female member, in the absence of males—See LIMITATION REGULATION (TRAVANCORE), No. 1, 21 T.L.R. 174.

Tawashi.

Suit by member of a—for separate maintenance—See MALABAR LAW (MAINTENANCE), No. 1, 16 M.L.J. 275.

Taxation.

—of costs—See PRACTICE (MISCELLANEOUS CASES), No. 5, 33 C. 827.

Temple Committee.

Power of—to dismiss trustee of a temple—See ACT XX OF 1863 (RELIGIOUS ENDOWMENTS), No. 1, 8 Bom. L.R. 407.

Tenancy.

Sub-division of—under S. 88, Bengal Tenancy Act, rent-receipts how far evidence of—See ACT VII OF 1885 (BENGAL TENANCY), No. 31, 10 C.W.N. 216.

Tenancy Act (Agra).

See ACT II OF 1901 (N.W.P.).

Tenancy Act (Bengal).

See ACT VIII OF 1885 (BENGAL).

Tenancy Act (Central Provinces).

S. 41—See *I, Limitation Act*, No. 18.

(1) S. 41, sub. S. (3), cl. (a)—'claim to purchase,' meaning of—

An application, by a landlord to a Revenue Officer, to fix the value of a tenant-right cannot, by itself, be regarded as amounting to an agreement, on the landlord's part, to purchase that right whatever may be its value and so if, after such value has been fixed, the landlord should elect not to purchase, the tenant would be left

Tenancy Act (Central Provinces).—(Contd.).

without any remedy towards enforcing the purchase. Such an application, therefore, cannot constitute a 'claim to purchase' within its meaning in S. 41, sub-sec. 3, cl. (a) of the Act, the 'claim to purchase' referred to in that clause implying a claim of such a nature as would form the basis of a suit for specific performance by the tenant should the landlord recede from his offer to purchase. **Kodubakhsh v. Biahnu**, 2 N.L.R. 27.

ISMAY, J.C.

S. 46—See I, 875, No. 3.

S. 49 (1)—See I, 876, No. 4.

(2) S. 69—Tenant ejected otherwise than under, right of, to sue landlord for possession.

Plaintiffs were ejected from their holding, which consisted entirely of *sir* land, by the defendant, their landlord. On a suit by the plaintiffs to recover possession from the landlord, *held*, S. 69 of the Act expressly limits the circumstances, in which an ordinary tenant may be ejected, and the first proviso to S. 92, *ibid.*, indicates the intention of the Legislature that ejection, otherwise than in accordance with the provisions of the Act, shall give the ejected tenant a cause of action, on which he may recover possession. **Saheb Lal v. Sukh Lal**, 2 N.L.R. 121.

DARKE-BROCKMAN, A.J.C.

S. 70—See I, 876, No. 5.

(3) S. 85—Recorded tenant, decree for arrears of rent obtained against, ejection in execution of—Forfeiture of the entire holdings.

The lands in dispute formed the occupancy holdings of one J, who died leaving two sons, the plaintiff K and another, G. The fields were recorded in the name of G alone and in execution of a decree for arrears of rent obtained against him by the *malguzar*, the defendant in this case, G was ejected from the holdings. Thereupon, the present suit was instituted on behalf of the other minor son K by his mother as next friend, on the ground that he succeeded to the holdings jointly with G on the death of his father, that he was not a party to the suit for arrears of rent and was not therefore bound by the order of ejection.

Held, it was clear that, had the holding in the present case been *sold* in execution of a decree for arrears of rent obtained against G, the title of the purchaser could not have been question-

Tenancy Act (Central Provinces).—(Contd.).

ed by the plaintiff K (a), and on principle, no distinction could be made between a case of sale and one of ejection. The decree was a decree against G as a manager representing the owners of the tenant rights, and the subsequent ejection of G was constructively also an ejection of the plaintiff K. **Kisan Kunb v. Raghunath Kalar**, 2 N.L.R. 101.

ISMAY, J.C.

References.—(a) 10 C. 996, R. 25 C. 896, 26 C. 677, 14 B. 597, P., and 4 C.W.N. 608, D.

Tenancy Act (N.W.P.).

—See ACT II OF 1901 (N.W.P.).

Tenancy Act (Punjab).

See ACT XVI OF 1887 (PUNJAB).

Tenancy in Common.

See I, Construction (of Deeds), No. 12; Party-Wall, No. 1; and Transfer of Property Act, No. 15.

Tenants (occupancy).

See I, Rent, No. 6.

Tenure of Groves.

Incidents of—Landlord and Grove-holder—Landlord, rights of—to resume grove by portions—See LANDLORD AND TENANT, No. 8, 9 O. C. 109.

Tenures.

Irredeemable or perpetual tenure—See MORTGAGE (REDEMPTION), No. 18, 16 M.L.J. 358.

Testamentary Guardian.

Removal of—When his interests are adversed to minor—See ACT VIII OF 1890 (GUARDIANS AND WARD), No. 2, 16 M.L.J. 357.

Thak Map.

See I, Revenue Sale, No. 3.

Title.

(1)—to space occupied by a building, right to prescribe for—See LIMITATION, No. 2, 16 M.L.J. 281.

(2) Proof of plaintiff's—in a suit for possession against a trespasser—possession good title against all but rightful owner—See RIGHT OF SURRENDER, No. 9, 9 O.C. 273.

(3) Purchase at execution sale with knowledge of defective—; right to refund of purchase-money—Warranty of—in Court-sale—See CIV. PROC. CODE, No. 185, 3 A.L.J. 819.

Torts.

- (1) *Joint wrongdoers, extent of liability of each of one of--*

Where the prime mover in a wrongful act has the support of another, the latter may, also, be himself a wrongdoer and, in the case of such joint wrongdoers, it is competent for the Court to hold each of them liable for the whole damage. **Krishnan Krishnan Namburi v. The Dewan of Travancore**, 21 T.L.R. 211.

GOVINDA PILLAI and RAMACHANDRA ROW, JJ.

- (2) *Malicious prosecution by servant in the interest of master—Liability of latter for damages—Implied authority of servants—See MALICIOUS PROSECUTION, No. 4, 10 C.W.N. 723.*

- (3) *Procuring a breach of contract, action for damages for—See DAMAGES, No. 1, 8 Bom. L. R. 610.*

See, also, 1, 878-880 ; and Negligence, No. 2.

Track Rent.

See 1, Act I of 1874 (Bombay), No. 1.

Trade.

See 1, Custom of Trade, No. 2.

Trade Mark.

- (1) *Firm—Partner's right to use the trade-mark—Rights of seller of goods to trade-mark—Manufacturer.*

A trade-mark belonging to a firm would, in the absence of express provisions to the contrary, as part of the partnership assets, be available for any partner of that firm carrying on that business.

In the absence of contract, a seller of goods has no exclusive right to a mark which merely denotes goods which he sells even though he may have designed the mark himself. Such a mark may be a mere quality-mark, indicating the reputation of the goods irrespective of the reputation of the seller.

Obviously, every trader being entitled, if not bound, to state truthfully the quality of the goods he sells, no one trader can restrain any other from exercising that right by a mark truthfully indicating quality. For neither of the two grounds for protection exists in such a case. His reputation is not injured and no deception is practised on the public. To give an exclusive right, there must be something further. The mark must amount to a representation that the quality is wholly or in part

Trade Mark.—(Continued).

due to, and guaranteed by, some person or persons concerned in, or connected with, the origin or history of the goods. In such cases, the public are invited to rely on the reputation of the persons denoted, and no other persons can, without their authority, make such representation. And it is a question of evidence in each case whether there is false representation or not. **Yadilal Sakalehand v. G. F. Burditt & Co.**, 7 Bom. L.R. 272 = 80 B. 61.

JENKINS, C.J. and BATTY, J.

- (2) *Counterfeit, resemblance, intentional or accidental—Expert evidence, if admissible—Malice in law, not sufficient—Malice in fact to be proved—Sea Customs Act (VIII of 1878)—Merchandise Marks Act (IV of 1889), S. 19 (a)—Collector of Customs, power to make enquiry—Detention of goods by Collector—Documents, tendered de-bene-esse—Witness, refreshing memory by document, effect of.*

A counterfeit trade-mark may be defined as a trade-mark which is either designed and used with the intention of deceiving or which, by reason of its resemblance to another pre-existing and already established mark, is calculated to deceive, apart from any dishonest intention.

It lies upon the plaintiff to establish affirmatively that the marks of resemblance were accidental and not designed.

If the plaintiff, having the opportunity, deliberately abstains from showing that the resemblance adopted by him was accidental and innocent, it necessarily follows that it was the result and outcome of deliberate design and intention. If the Court, on the facts before it, must presume that the resemblance is not accidental, but intentional and designed, then the imitation must have been designed with the object of deceiving. If the object was to deceive, then the Court will presume as against the wrong doer, that the means employed to cause deception, were calculated to effect that purpose. This is the effect of the ruling in **JOHN SMITH v. REDDAWAY (a)**.

It is only if the fraudulent design is negatived, that it becomes material to enquire whether the resemblance between the two combinations of marks, was calculated to deceive.

Evidence of experts or men in the trade cannot be given to show whether or not a combination is such as is calculated to deceive the

Trade Mark.—(Concluded).

purchaser. It is a question entirely for the Judge. Evidence of facts, which may assist the Judge to come to a conclusion whether one mark is a colourable imitation of another, may be given (b).

Malice in law is not sufficient, i.e., it is not sufficient to show that the mark or combination of the plaintiff was falsely charged as a colourable imitation, without legal justification or excuse. Malice in fact must be proved.

The provisions of the Sea Customs Act (VIII of 1878) as amended by the Merchandise Marks Act (IV of 1889), make it quite clear that the Collector had no power to deal with the question raised by the defendants, when once it became apparent that the plaintiff desired to contest the defendants' claim. It was his duty then to have held his hand and to have obtained the goods on being properly indemnified, until the question was properly disposed of in a competent Civil Court.

The enquiry which the Collector of Customs is to make under S. 19 of the Act must necessarily be of a most limited character, for, the Act does not empower him to summon witnesses or to take evidence. Documents tendered in an examination *de-bene-esse* are not required to be tendered again during the hearing.

Where a witness during cross-examination is asked to refresh his memory by referring to a privileged document, he may be told that the consequence of his so referring to the document, would be to allow the other side to have a look at the document. **Nemi Chand v. Wallace**, 4 C.L.J. 268=10 C.W.N. 107.

SALE, J.

References.—(a) 32 C. 401. (b) (1899) A.C. 83 at p. 85, F. and (1882), L.R. 7 App. Cas. 219, R.

See, also, I, 880-884; and Appeal (Privy Council), No. 4; and Limitation Act, No. 19.

Trains.

See I, Negligence, No. 1.

Tramway Company.

See I, Act I of 1874 (Bombay), No. 1.

Transfer.

(1)—of appeal—Power of District Judge to withdraw an appeal from the Court of a Subordinate Judge to whom it had been transferred and

Transfer.—(Concluded).

transfer it to an Additional District Judge—See APPEAL (GENERAL), No. 6, 10 C.W.N. 841.

(2) Power of District Judge to transfer a case withdrawn by him from a Subordinate Court to his own file—See ACT XII OF 1887 (BENGAL), No. 5, 10 C.W.N. 902.

See, also, I, Civil Pro. Code, Nos. 43 and 44, and Landlord and Tenant, No. 22.

Transfer of case.

Powers relating to—under S. 15 of the Charter Act dependent on the exercise of appellate jurisdiction—See LETTERS PATENT (BOMBAY), No. 3, 3 C.L.J. 5.

Transfer of Property Act (IV of 1882).

(1) Ss. 2 (d), 36—*Landlord and tenant—Apportionment of rent—property demised passing over to a person, other than the original lessor, by operation of law.*

Where the plaintiff succeeded the second defendant as *hikim* of a certain *purgannah* and claimed refund of rent for fifty five days up to the end of a *Fasli* year, from the first defendant, who, as mortgagee in possession of certain *manzas*, held under the second defendant, had previously collected, from the tenants of the *manzas*, the entire rent for that *Fasli* year, held, that, having regard to S. 2 (d) of the Transfer of Property Act, S. 36 of that Act, which is the only statutory provision in India dealing with the question of apportionment, does not apply, and that, except upon the principle of apportionment, the claim was unsustainable (a).

Obiter. It may be that the tenants were wrong in paying the first defendant the rents in advance, and that the plaintiff has a claim against the tenants for that overpayment, and that the latter may be entitled to be recouped by the first defendant. **Mathewson v. Shyam Sunder Sinha**, 33 C. 786.

MACLEAN, C.J. and GEHRT, J.

References.—21 C. 383, R. (a) 26 M. 540, D.

(2) S. 2 (d)—See No. 12, *infra*.

(3) S. 3 —

The rule in this country as to the assignability of an executory contract for the purchase and sale of goods is that the benefit of such a contract can be assigned, understanding, by benefit the beneficial interest under the contract and the right to enforce it. This rule is subject to certain qualifications, viz., (1) that the benefit is not coupled with a liability, and

Transfer of Property Act (IV of 1882)—(Continued).

(2) that the nature of the contract has not been affected by personal considerations. Such a contract falls within the rule which is in existence and in force in this country as to assignment of contracts. Such a contract though perhaps contingent in character, comes within the definition of actionable claim in the Transfer of Property Act, S. 3.

An assignment made under such circumstances as to amount to fraud of the Bankruptcy Law falls clearly within S. 6, cl. (h) of the Transfer of Property Act and is void. **Jaffer Meher Ali v. The Budge the Budge Jute Mills Co., Ltd.**, 10 C.W.N. 755 = 33 C. 702.

SALE, J.

See, also, I, *Landlord and Tenant*, No. 39.

(4) *Ss. 3, 4, 123—Gift, if must be registered by the donor himself—Gift to wife—Death of donor—Registration at the instance of the widow, effect of.*

It is not necessary for the validity of a deed of gift that it should be registered by the donor himself.

Where a Hindu executed a deed of gift in favour of his wife and died and the deed was subsequently registered at the instance of the widow held, that it was a valid deed of gift within the provisions of S. 123 of the Act. **Bhabatosh Banerjee v. Shaikh Soleman**, 10 C.W.N. 717 = 33 C. 584 = 4 C.L.J. 340.

MACLEAN, C.J. and GEIDT, J.

Reference.—20 A. 392, R.

(5)—*Ss. 3, 58 and 59—Movable property—Mortgage by deposit of title deeds, with creditor's Agent in Calcutta—Sub-mortgage by deposit of the mortgage deed, validity of—See MORTGAGE (EQUITABLE MORTGAGE), No. 1, 10 C.W.N. 276.*

(6) S. 4—See No. 4, *supra*.

(7) *S. 6—Will—Construction of document—Adverse possession of joint Hindu family property—Contracts to make testamentary dispositions, validity of—Transfer of the chance of relation obtaining property on the death of a kinsman, suit by transferee for declaration of right on the basis of—Rights derived under a contract to make testamentary disposition, not transferable.*

On the 27th July, 1882, C executed and registered a document, which he called a 'Will' in

Transfer of Property Act (IV of 1882).—(Continued).

which, after reciting that he was about 57 years of age and that it was desirable to arrange for the succession of his property after his death, he agreed (*ikrar karta*) and recorded that R, his nephew, who was a half sharer, should own and possess all his property (8-annas share in two villages) after his death, with full powers of sale and transfer, but without any power to interfere with it during his lifetime. It also declared that if C's wife survived him, R should maintain and obey her and if he failed to do so, she would retain all the property and the document would become null and void. On the same date, R executed and registered a deed by which in consideration of C's deed he agreed to make no claim to C's property and to obey him and his wife, but that if he failed to comply with this condition, he would have no right to the property. On the 6th November, 1903, C and his wife transferred, by a deed of gift, the greater part of one of the two villages in favour of their sons-in-law and grandson. On the 9th September, 1903, R executed a deed by which he sold to P a 4-annas out of 8-annas share in both the villages and also the half of whatever property they might recover in a suit instituted by them jointly on the deed executed by C on the 27th July, 1882. R and P accordingly instituted a suit for a declaration that C had no power, to transfer the property specified in the deed of 27th July, 1882, and for the cancellation of the deed of gift in favour of, C's relatives, or in the alternative for a decree for actual possession of 8-annas share in the villages. R's son was also made a defendant on his alleging that he and his father were members of a joint Hindu family. The principal pleas of the defendants were that the suit was barred by limitation and that R having dealt with the property in contravention of the condition of C's deed of the 27th July, 1882, that deed became null and void. The suit was dismissed and P appealed to the extent of his share.

Held (*per* SCOTT, J.C.) that the property in suit was not the joint property of C and R after the 27th July, 1882, and that C having been in adverse possession of the property in suit since 1882, the suit was barred by limitation.

A document does not necessarily become a will because the person executing it calls it one and in order to determine the effect of that document its terms must be considered. *Held*

Transfer of Property Act (IV of 1882).—(Continued).

therefore, that having regard to the terms of the deed executed by C on the 27th July, 1882, it must be held to be a will and that C had power to revoke it.

Held (per CHAMIER, A. J. C.) that contracts to make testamentary dispositions are valid; but under S. 6 of the Transfer of Property Act the person in whose favour such a contract exists cannot transfer his supposed rights under the contract to a third person and such a third person cannot, on the strength of such transfer, sue for a declaration of those rights. **Prag Dat v. Chote Singh**, 9 O.C. 55 (B)

SCOTT and CHAMIER, J.CS.

(8) S. 6—*Right of a reversionary heir, inalienability of the—*

The right of a presumptive reversionary heir under the Hindu Law is no more than a *spes successionis* or expectancy of succeeding to property (a) and such a mere expectancy cannot be made the subject of a transfer (b). **Manickam Pillai v. Ramalinga Pillai**, 29 M. 120.

DAVIES and BENSON, JJ.

References.—(a) 24 A. 94, F. (b) 13 M.L.J. 323, F.

(9) Ss. 6, 19, 21—Vested or contingent interest—See REGISTRATION ACT (III OF 1877), No. 11, 7 Bom. L.R. 742.

(10) S. 6 (a)—*Spes successionis*—Transferability and releasability of,—See MAHOMEDAN LAW (SUCCESSION), No. 2, 8 Bom. L.R. 781.

(11) S. 10—*Condition against alienation—Compromise-decree.*

One of the terms of a compromise embodied in a decree was that the party, to whom a house was conveyed under it, was not at liberty to transfer it, without the consent and permission of the other party to that compromise and decree. *Held*, that such a condition was void as being a restraint upon alienation, and the house could be transferred in spite of that condition. **Khilali Ram v. Raghunath Prasad**, 3 A.L.J. 621 = A.W.N. (1906), 214.

KNOX, J.

Reference.—7 A. 516, F.

(12) Ss. 14, 15 2 (d) and 123—See ACT II OF 1882 (TRUSTS), No. 2, 1 M.L.T. 227.

(13) S. 15—See No. 12, *supra*.

(13-a) S. 19—See No. 9, *supra*.

(13-b) S. 21—See No. 9, *supra*.

14) S. 36—See No. 1, *supra*.

Transfer of Property Act (IV of 1882).—(Continued).

(15) S. 37—Applicability of the principles of the section to cases of suits by tenants in common for ejectment and partition making all the co-owners parties—See MISJOINDER OF PARTIES, No. 1, 20 M. 29.

(16) S. 39—Intention to defeat right of maintenance-holder—fraudulent intention—purchaser with notice of right to maintenance—See HINDU LAW (MAINTENANCE), No. 2, 10 C.W.N. 1074.

(17) Ss. 39, 100—*Maintenance—Charge—Decree on compromise creating charge—Bona fide transferees for value without notice.*

B instituted a suit to recover certain property from M who was entitled to maintenance. The suit resulted in a decree incorporating a compromise. M sued B and certain transferees for value without notice to recover arrears of maintenance by the sale of certain property charged by the above decree with the payment of the maintenance.

Held, (a) that section 39 of the Transfer of Property Act had no application;

(b) that, it being clear upon the construction of the decree that it was the intention of the parties to create a charge on the property for the payment of maintenance within the meaning of S. 100 of the Transfer of Property Act, the charge could be enforced against bona fide transferees for value without notice (a). **Musammatt Maina v. Musammatt Bachchi**, A.W. N. (1906), 165 = 3 A.L.J. 551 = 28 A. 655.

RICHARDS, J.

Reference.—(a) 3 A.L.J. 220, D.

(18) S. 40—*Constructive notice to mortgagee of agreement to mortgage the lands to another—Postponement of the mortgagee's rights.*

Where a mortgagee was in possession of information, at the time of the mortgage to him, that the title-deeds of the mortgaged properties were deposited with a third person as security towards a debt in favour of that person, the mortgagee must be held to have had constructive notice of the agreement to give a mortgage of the land to such third person and, in accordance with the principles embodied in the above S. 40 of the Act and S. 91 of the Indian Trusts Act, such mortgagee's interest must be post-

Transfer of Property Act (IV of 1882).—(Continued).

poned to the equitable right of the third person. **Kameswaramma v. Sitaramanuja Charlu**, 29 M. 177.

DAVIES and BENSON, JJ.

(19) S. 41—*Evidence Act (I of 1872), S. 115*

—*Consent—Mistake of law—Estoppel.*

Held, that the consent referred to in S. 41 of the Transfer of Property Act must be an intelligent consent and not one brought about by misapprehension as to legal rights. *Held*, further, that an admission on a point of law is not an admission of a "thing" within the meaning of S. 115 of the Evidence Act, **Dungariya v. Nand Lal**, A.W.N. (1906), 182 = 8 A.L.J. 584.

AIKMAN, J.

(20) S. 43—*Sale under a prior mortgage, mortgagor acquiring mortgaged property sold on a, effect of—Right of mortgagor, on such acquisition, against his subsequent mortgages.*

The mortgage relied on by the plaintiff in this case was executed after a decree had been obtained against the mortgagor under a previous mortgage by him. A sale took place under that decree and the mortgaged property was purchased by the mortgagee at such sale. But the right acquired by such purchase eventually devolved upon the mortgagor. *Held*, on the principle embodied in S. 43 of the Act, the mortgagor cannot use his subsequently acquired interest to invalidate his own mortgages to the plaintiff. The effect of such purchases by the mortgagor will be so far as regards himself and those who claimed under him, simply to extinguish the prior mortgage and to allow the rights of the subsequent incumbrancers to be determined on the footing that such prior mortgage has ceased to exist. **Manjappa Rol v. Krishnayya**, 29 M. 118.

SUBRAHMANYA AYYAR, OFFG. C.J. and BODDAM, J.

See, also, I, Specific Performance, No. 6.

(21) S. 44—*Lessee of a house—partition suit maintainable—Civ. Pro. Code (Act XIV of 1882), s. 34—objection to want of parties waived.*

A lessee of an undivided portion of a house can maintain a suit for partition if partition necessary to give effect to his transfer.

Transfer of Property Act (IV of 1882).—(Continued).

A lessee of a house is a transferee within the meaning of S. 44 of the Transfer of Property Act.

Where objection to want of parties was not raised by the defendants, it must be deemed to have been waived, but the Court could add any one as a party if it thought it necessary. **Muhammad Jafar Khan v. Mashar-ul-Hasan**, 8 A.L.J. 474 = A.W.N. (1906), 199.

BANERJI and AIKMAN, JJ.

(22) S. 48—*See MORTGAGE (REDEMPTION), No. 6, 2 N.L.R. 62.*

(23) S. 51—*Bona fide improvements by a stranger on another's property—Equitable rights in him before eviction—Compensation for improvements.*

Under the law in England, to raise an equity in favour of a stranger building on another's land, two things are required, first, that the person expending the money supposes himself to be building on his own land; and, secondly, that the real owner, at the time of the expenditure, knows that the land belongs to him, and not to the person expending the money in the belief that he is the owner. The law as laid down in S. 51 of the Act, however, does not, in all respects, follow the law of England. The section requires merely that the transferee mentioned therein shall have made the improvements believing, in good faith, that he is absolutely entitled to the property. There is nothing in the wording of the section to justify the contention that the real owner must, at the time of expenditure, know that the land belongs to him. Under the section the transferee who, after having made, the improvements on the property, is subsequently evicted the former by any person having a better title, has a right to require the person causing the eviction either to have value of the improvement estimated and paid to him or to sell to him such person's interest in the property at the market-value thereof irrespective of the value of such improvements. **Mr. Collier v. Mrs. L. Baron**, 2 N.L.R. 84.

ISMAY, J.C.

(23-a) S. 51—*Application of, to Mahomedans—Sale by de facto guardian of Mahomedan minor—Effect on the minor.*

The sale by the mother, though made by her as *de facto* guardian of the minor, the parties being Mahomedans, is not binding on the minor (a).

Transfer of Property Act (IV of 1882).—(Continued).

There is no rule of Mahomedan Law, which precludes persons from claiming the benefit of the principle of equity embodied in S. 51. S. 51 does not cease to apply, on the ground that Chapter II of the Act is not to be deemed to affect any rule of Mahomedan Law. A party, who acts under a mistake of law, may still act in good faith within the meaning of the section, and the question, whether the transferor of immovable property believes in good faith that he is absolutely entitled thereto, is a question of fact. **Durgosi Row v. Fakcer Sahib**, 1 M.L.T. 439.

WHITE, C.J., & SUBRAHMANYA AYYAR, J.

References:—(a) 26 N. 734; 29 C. 473; 20 B. 199, *Appr. and Foll.*

See, also, I, Landlord and Tenant, No. 12.

(24) S. 52—*Lis pendens*—*Contentious suit*.

Where there are several defendants to a suit, the suit does not become "contentious" within the meaning of S. 52 of the Transfer of Property Act, 1882, only when all the defendants are served with summonses in the suit, nor can a suit be contentious as regards some of the defendants and not contentious as regards others. **Chaturbhuj v. Lachman Singh**, A.W.N. (1905), 250 = 28 A. 196.

STANLEY, C.J. and BURKITT, J.

Reference.—21 A. 408, *Disc. and doubted*.

(25) S. 52—*Lis pendens*—*Suit decreed in pursuance of a compromise, transfer during the pendency of, whether valid*.

In this case the question was referred to the Full Bench for determination, whether the doctrine of *lis pendens*, as embodied in S. 52 of the Act, applies when the suit during the pendency of which the transfer takes place is subsequently compromised and a decree is given in pursuance of such compromise. In support of the view that the section did not apply in the case of a compromise decree, it was urged that the word "contentious" was introduced for the express purpose of excluding the operation of the doctrine of *lis pendens* when the decree was a decree by consent. *Held, per WHITE, C.J.*, a suit is either contentious or non-contentious and the fact that there is a decree by consent cannot, by a sort of relation back, alter the nature and character of the suit (a). The very fact that there is a compromise would show that the suit was originally contentious, otherwise, there would be nothing to compromise.

Transfer of Property Act (IV of 1882).—(Continued).

In giving a decree, in pursuance of a compromise, the Court performs a judicial and not a mere ministerial function and the fact, that a decree is given in accordance with the terms come to between the parties, does not prevent the decree being the formal expression by the Court of an adjudication on a right claimed or a defence set up within the meaning of the definition. S. 52 of the Transfer of Property Act should, therefore, be construed as applying to the case of a compromise decree in the absence of anything in the nature of fraud or collusion (b).

On the argument, that was urged that the word 'therein' after 'decree or order' in the section refers back to the words 'contentious suit or proceeding' and that, though in the present case, the suit was contentious up to the time the compromise was entered into, it ceased to be such when that was concluded and, consequently, the decree in question was not a decree of the description contemplated by the section *held, per SUBRAHMANYA AYYAR, J.*, the phrase 'contentious suit or proceeding' in the section ought not to be interpreted as covering only a suit or proceeding in which the parties are actually disputing and that only so long as the actual contest continues. The contentious jurisdiction here spoken of is, obviously, that, by invoking which a party having a difference with another puts the law in motion as against that other, in contradistinction to jurisdiction to be resorted to in matters which *ex hypothesi* admit of no opposition. The unsoundness of the other view will be seen from the starting consequences which it would involve, *viz.*, that a decree passed *ex parte*, or on confession, or as the result of the defendant abandoning a defence set up would equally with a compromise decree, not avail the successful party as against a transferee *pendente lite* from the defendant. The essence of the doctrine of *lis pendens* is that where a proceeding before a Court exercising contentious jurisdiction is honestly brought to a termination in one of the modes which the law permits it to be determined by and a decision of the Court is obtained such decision is binding upon all persons who claim title by virtue of a transfer pending the litigation and there is no reason therefore, for attaching greater efficacy to a decision arrived at after actual contest than to decisions arrived at otherwise.

Per BENSON, J.—If the compromise of a suit were held to render it non-contentious, it

Transfer of Property Act (IV of 1902).—(Continued).

would never be safe for any party to enter into a compromise, since by so doing he would jeopardise the fruits of his decree, which might be made of no effect by a transfer made behind his back by the other party. **Annamalai Chettiar v. Malayandi Appaya Naik**, 1 M.L.T. 145 = 16 M.L.J. 372 = 29 M. 426 (F.B.).

WHITE, C.J., and SUBRAHMANYA AYYAR and BENSON, JJ.

References.—(a) 31 C. 745, F. (b) 12 M. 439 overruled, 18 C. 1888, Diss., 7 W.R. 108, 21 W. R. 349, F., and 15 C. 756 (761), R.

(26) *S. 52—Suit by widow to have her maintenance charged on immovable property—Mortgage pending suit—Lis pendens.*

A suit, in which a widow claims to get her maintenance made a charge on immovable property, is one in which "a right to immovable property is directly and specifically in question" under S. 52, and a person, who takes a mortgage of the property, while that suit is pending, is bound by the *lis pendens*. **Bhatta v. Krishna Sastri**, 16 M.L.J. 412 = 29 M. 508.

BENSON & SANKARAN NAIR, JJ.

References.—4 C. 400 (P.C.) & 19 A. 504, F.

See, also, I, 885, Nos. 5 and 6.

(27) *Ss. 52, 86 & 87—lis pendens—decree nisi for foreclosure—private sale of property before final decree—Effect of.*

A decree for foreclosure under section 86 of the Act is a decree *nisi* and not a final decree, and the suit in which it is passed does not terminate until an order absolute for foreclosure is made under S. 87. A purchase made before the passing of the order absolute is a purchase *pendente lite* and the purchaser is bound by the order absolute for foreclosure, although he is not made party to it (a). **Parasotam v. Chheda Lal**, 3 A.L.J. 675 = A.W.N. (1906), 283.

BANERJI, J.

References.—(a) 23 A. 381 and 22 B. 939, R & F. 1 A.L.J. 288, Dissd.

(28) *S. 53—Part of the consideration paid—Colorable transaction.*

Ordinarily, a transaction may be described as colorable when it is not what it purports to be; but when, as a matter of fact, a substantial part of the consideration appears to have been paid, the transaction cannot be described as colorable. **Yedu Yedu v. Kesarhai Joharmal**, 3 Bom. L.R. 110.

Transfer of Property Act (IV of 1902).—(Continued).

SIR LAWRENCE JENKINS, C.J. and BATTY, J.
(29) *S. 53—Fraudulent transfer of moveable property to the prejudice of creditors—Good faith and consideration—Consideration in part discharge of debts.*

Where property sought to be assigned is not immovable property, S. 53 has no direct application, and the question must be decided by a reference to general principles of justice, equity and good conscience. Each case must depend upon its own circumstances, and, in all, the question is one of fact, whether the transaction is *bona fide* or is a contrivance to defraud creditors (a).

It may be stated, generally, that a deed is void against creditors, when the debtor is in a state of insolvency or when the effect of the deed is to leave the debtor without the means of paying his present debts. If this is the condition of the debtor or the consequence of his act, it is not sufficient to render a deed valid that it should be made upon good consideration; for a good consideration does not suffice, if it be not also *bona fide* (b).

There is nothing in S. 53 to prevent a creditor being given preference, provided nothing more is done by the transaction, either with reference to the transferor or transferee, so as to injuriously affect the creditors of the former.

But, if the transaction is entirely invalid as against the creditors, it cannot be allowed to be treated as partly valid, even to the extent to which the consideration for the deed of assignment went in discharge of the executant's creditors. It is open to these satisfied creditors to protect themselves, by discharging the claims of the executant's other creditors, at whose instance the transaction is voidable. **Ghidambaram Chettiar v. Sami Iyer alias Arunachalamaiyer**, 16 M.L.J. 427 = 1 M.L.T. 351.

SUBRAHMANYA AYYAR and BENSON, JJ.

References.—(a) 14 Moo. P.C. 121 (186): 15 E.R. 251, R., and 5 Bom. L.R. 218, R. (b) 20 M. 435, R.

(30) *S. 53—Necessity of intent to defeat creditors generally.*

Every transfer of immovable property, made with intent to defeat or delay the creditors of the transferor, is voidable, at the option of any person so defeated or delayed but the part

Transfer of Property Act (IV of 1932).—(Continued).

claiming to have the transfer avoided must establish an intent to defeat or delay his creditors, generally, and, if there has been good consideration and the transaction is not a mere sham, a transfer by a debtor, even if made with intent to defeat and delay one particular creditor, is not impugnable by that creditor. *San Dun v. Mein Gale*, 3 L.B.R. 188.

Fox, C.J.

Reference:—25 B. 222, F.

See, also, I, 885, Nos. 7 and 8; and *Mahomedan Law (Gift)*, No. 4.

(30-a) S. 54—*Sale under registered deed—Effect of non-payment of purchase-money—Rights of subsequent purchaser and vendor as against the prior purchaser.*

Under S. 54, where there is a valid sale of land under a registered deed, such a sale is a completed transaction, notwithstanding that the price agreed upon, at the time of execution of the deed, has never been paid (a). The seller can, no doubt, sue the purchaser for payment of the price, and he can also sue to set aside the sale-deed, but a subsequent purchaser of the same property has no remedy whatever as against the prior purchaser. *Govindammal v. Gopalachariar*, 16 M.L.J. 524.

WHITE, C.J., & MOORE, J.

References:—(a) 22 B. 176 (189), 23 B. 525, R.

See, also, I, *Registration Act*, No. 6.

Ss. 54, 55—*See* I, 886, No. 11.

(31) Ss. 54 and 55 (b) —*Contract for sale of land—Absence of proper registered sale deed—Delivery of possession to vendee—Suit in ejectment by vendor, whether maintainable when vendee's right to specific performance not barred.*

The question in this case was whether a contract for sale, accompanied by delivery of possession gives the purchaser a lien on the property and such an interest as is sufficient to enable him to resist a suit in ejectment by the vendor, in other words, whether, where the vendee's right to obtain specific performance by way of execution of a sale deed by the vendor has not become barred by time, the vendor is entitled to sue for recovery of possession from the vendee of the land agreed to be sold. *Held*, under S. 54 of the Act, a sale of immovable property of the value of Rs. 100 and upwards can be made

Transfer of Property Act (IV of 1932).—(Continued).

only by a registered instrument, and the section expressly enacts that a contract for sale "does not, of itself, create any interest in, or charge on, such property." The latter provision could not be construed as enacting by implication, that contract for sale coupled with possession creates an interest or charge on the property even although the requirements of the section with reference to a registered instrument have not been complied with.

The charge provided for by S. 55 (b) of the Act in favour of a purchaser paying the price or portion thereof, when considered with the absence of any provision for the case of part performance by delivery of possession, shows that the latter was not intended to give rise to any interest in the property in the buyer. So, in a suit in ejectment, like the present case, instituted by the vendor, whose title is admitted, the defendant, who has not secured the prescribed registered proof of his purchase cannot succeed by merely setting up a contract with himself on the part of the plaintiff to sell the disputed land and by showing that that contract is specifically enforceable.

It might be said that, notwithstanding the express words of S. 54 of the Act, it is inequitable to apply the section as against a party, who is in possession and who, if he had sued for specific performance of the contract to sell, would have been entitled to a decree but the considerations of public policy on which the requirements laid down in S. 54 of the Act are based ought to be primarily taken into account it being borne in mind that, in enacting that section, it was the intention of the legislature, by means of compulsory registration, to minimise, as far as possible, the chances of litigation and to reduce the opportunities for perjury in connection with sales of immovable property. *Kurri Veerareddi v. Kurri Bapireddi*, 1 M.L.T. 158 (F.B.) = 29 M. 330 = 16 M.L.J. 395.

WHITE, C.J., and SUBRAHMANYA AYYAR and BAXTON, JJ.

References.—15 M. 451, 6 M.L.J. 32 and 21 M. 291, overruled, 16 M. 484, 24 M. 449 and 18 M.L.J. 217, approved and followed, 26 B. 466, approved, 16 A. 844, disapproved, 24 M. 377, explained.

Ss. 54 and 100—*See* I, 886, No. 12.

(32) S. 55, limitation for suit to enforce a vendor's charge for unpaid purchase-money—*See* Limitation Act, No. 95, 29 M. 305.

Transfer of Property Act (IV of 1882).—(Continued).

(33) S. 55—unpaid purchase money, whether a charge on immovable property sold—See LIMITATION ACT, No. 69, § O.C. 284.

See, also, I, 887-889; Nos. 14, 15, 16.

S. 55—Sub-sec. 1 cl. (g)—See I, 887, No. 13.

(33-a) Ss. 55, 59—Assignment of mortgage right pending suit on mortgage—Insufficient attestation of the mortgage deed—Discovery of this defect after assignment—Suit by assignee for refund of purchase money—Special covenant protecting assignor from liability—Effect of.

A mortgagee assigned all his rights under the mortgage bond, after instituting a suit on the bond against the mortgagor. At the time of assignment, both parties were ignorant of the fact that the bond was attested by only one witness, contrary to S. 59. The assignee specially covenanted that the assignor (mortgagee) shall not be liable for any defect in the claim transferred and assigned or responsible for any sum of money that may not be recovered by the assignee. Subsequently, the above defect was discovered and the assignee brought a suit for declaration that the assignment was void and for a refund of the consideration paid by him to the assignor for the assignment.

Held, that the assignment was not void, and that the assignee was not entitled to the refund, in view of the special covenant referred to above. Assuming that the technical informality in the mortgage deed would constitute a breach of the covenant, by the vendor, under S. 55, the special covenant, upon which the vendor (mortgagee) relies, negatives the statutory covenant that the interest which the seller professed to transfer subsisted. In other words, there is a contract to the contrary, within the meaning of S. 55. Non-compliance with the rule laid down in S. 59, as to attestation by witnesses, does not render the personal covenant to pay the debt void. With reference to bonds for money, which purported also to mortgage immovable property for the debts, but which were not registered as required by the Registration Act, the non-registration has been held not to affect the validity of the contract to pay the debt, and there is no real difference between the two cases.

Whether a particular affirmation of the quality of a specific thing sold is conditional, and the transaction is to be null, if the affirmation is incorrect, is only a question of the

Transfer of Property Act (IV of 1882).—(Continued).

intention of the parties to be decided by the circumstances of each case. Where, in addition to the affirmation, there is a separate warranty also in the agreement, the existence of such separate warranty shows that the matter of the warranty is not a condition or essential part of the contract, but that the intention of the parties was to transfer the property in the subject of the sale at all events. In such cases, if the sale is made in good faith and there is a breach of the warranty, a purchaser is entitled only to compensation for the breach of the warranty, and the sale is not even voidable. The present is an *a fortiori* case, inasmuch as the vendee (assignee) has chosen to contract to take the claim with all its defects, and to hold the vendor not responsible for the consequences. **Sadu Kavaur v. Tadepally Basaviah**, 1 M.L.T. 416.

WHITE, C. J., & SUBRAHMANTIA Aiyar, J.

References :—26 C. 78, Appr. 18 M. 29, not approved. 12 B. 7, Dist.

(34) Ss. 55 (2) and 108 (c)—See LIMITATION ACT, No. 76, 29 M. 353.

(35) S. 55 (5,d)—Sale of portion of Zamindari—Buyer put in possession of property sold—Covenant by seller to do all acts necessary in respect of the sub-division and separate assessment of the property sold—Separate assessment not made by Revenue authorities—Liability of buyer to pay *peishcush* for the property sold.

Where a portion of a Zamindari was sold to the defendants and the sellers covenanted to do any act necessary in respect of the sub-division registration and separate assessment of the property sold, and, owing to an objection on the part of the Revenue authorities to the sub-division and separate registration, the sellers continued to pay the *peishcush* in respect of the entire Zamindari including the portion sold, and afterwards sue the defendants for recovery of the proportionate share of the *peishcush* in respect of the portion sold to them,

held, that, under S. 55 (5,d) of the Act, the buyer is bound to pay all public charges subsequent to the passing of the property to him, in the absence of a contract to the contrary, and that there was no sufficient reason for imposing, on the vendee, a liability, only cond-

Transfer of Property Act (IV of 1882). (Continued).

ditional on the sub-division and separate assessment being brought about by the vendors, in respect of what was a first charge on the incomes of the property in the hands of the vendee, and that the non-determination of the separate assessment has no reference to the liability itself, which attaches as an incident of the transfer and is complete when the property passes.

Obiter. The failure of the vendor's duty to have the sub-division and separate assessment effected would, at most, only entitle the vendee to damages and would not affect the question of the vendee's liability in respect of the public charges. **Gopi Setti Narayanasami Naidu v. Raja Kavali Arunachella Row**, 1 M.L.T. 318=16 M.L.J. 563=29 M. 519.

• **SUBRAHMANYA AYYAR and BENSON, JJ.**

(96) Ss. 55 (6) (b), 82 and 95—*Charge—Money paid by the purchaser of a portion of the mortgaged property to pay off a prior mortgage—Payment by one who actually supplies the money—Contribution—Mortgage.*

In 1886 one R mortgaged an entire village B and *pattis* or shares in 4 other villages, and in March, 1901, the mortgagee obtained on the basis of this mortgage a decree for Rs. 59,480 by sale of the mortgaged property. In September, 1901, the mortgagor R entered into a contract with the plaintiff for sale of the entire mortgaged property for Rs. 80,000. Before this contract was executed and formal deed of sale written out in favour of plaintiff, the mortgagor in October, 1901, entered into another contract to sell the same mortgaged property to the mortgagee for Rs. 75,000. In November, 1901, the village B was sold by R to the plaintiff for Rs. 37,237 of which Rs. 28,000 were retained by the plaintiff to be paid to the mortgagee. In December, 1901, the plaintiff deposited the whole sum of Rs. 59,480 in Court for payment to the mortgagee, which sum was withdrawn from Court by the mortgagee in March, 1902, and in pursuance of the agreement to sell made with the mortgagee in October, 1901, he brought a suit for specific performance of the contract of sale against R excluding from his claim the village B already purchased by the plaintiff and obtained a decree in 1908 as to the *pattis* in the four villages on payment of Rs. 37,763. The

Transfer of Property Act (IV of 1882).—(Continued).

money was paid by the mortgagee into Court praying that it might be given to R on his executing the sale deed. Prior to the aforesaid payment, plaintiff had informed the mortgagee that he had paid Rs. 31,480 over and above the amount left with him by R for payment of the mortgage decree and either the said money should not be paid to R, or a notice given to the plaintiff of the deposit of the money in Court so that he might withdraw it therefrom himself. No notice of the deposit of the money was given to the plaintiff and the whole of the money was paid to R on his executing the sale deed as to the *pattis* in favour of the mortgagee. The plaintiff then instituted this suit against the mortgagee for recovery of Rs. 31,480 plus interest by way of damages by sale of the property sold to the mortgagee on the ground that he had a charge to that extent on the said property. The mortgagee pleaded that the money was not a charge on the property purchased by him on the ground that the money towards the mortgagee decree was not paid by the plaintiff himself but was paid by R and that it was not paid as mortgage money but as part of the purchase money.

Held, that the plaintiff who had become the owner of a part of the mortgaged property and who paid off the mortgage debt in order to save the property from being sold in execution of the decree obtained on the basis of the mortgage of 1886, acquired a charge on the 4 *pattis* in respect of so much of the money as the *pattis* were rateably liable for.

Held, further, that the money having been supplied by the plaintiff for the payment of the mortgage decree, the payment must be considered to have been made by the plaintiff and it was quite immaterial that R and not the plaintiff deposited the money.

Held, also, that even if the money paid by the plaintiff were considered as purchase money, he had a charge on the property sold to the mortgagee to the extent of the money paid by him under S. 55 (6) (b) of the Transfer of Property Act (IV of 1882). **The Hon'ble Raja Ali Mohammad Khan v. The Deputy Commissioner of Bara Banki**, 9 O.C. 259 (B).

CHAMBER and WELLS, J. CS.

References.—12 A. 110, 22 A. 284, 26 A. 407, 24 M. 96, 26 M. 686 and 26 B. 379, R.

(37) S. 55—See No. 70, *infra*.

Transfer of Property Act (IV of 1882).—(Continued).

(38) S. 56 (6) (b)—See No. 31, *supra*.

(38-a) S. 58—Mortgage by conditional sale—"Meddatu Krayam" meaning of—Construction whether document is sale or mortgage—Transfer of interest need not be in express terms.

The question whether a document is a mortgage or a conditional sale is not governed by the provisions of the Act, but the provisions may be looked to with a view to determine the legal effect of the instrument in question. S. 58 specifies three instances of mortgage by conditional sale, and a document described as '*Meddatu Krayam*,' which is defined as 'Land, mortgaged with option to the lender to consider it as his property if the mortgage is not redeemed within a stipulated period' seems to fall under the first kind of mortgage by conditional sale specified in the section.

The mere use of the words "*Meddatu Krayam*" in a document is not, however, conclusive.

A transfer of an interest in immovable property need not be in express terms, provided the instrument, taken as a whole, operates as such a transfer. *Kola Venkatanarayana v. Yuppala Ratnam*, 29 M. 581.

WHITE, C.J., and BENSON, J.

Reference.—14 M.L.J. 337, D.

(39) S. 58—See MORTGAGE (EQUITABLE MORTGAGE), No. 1, 10 C.W.N. 276.

(40) Ss. 58, 59—See MORTGAGE (EQUITABLE MORTGAGE), No. 1, 10 C.W.N. 276=88 C. 410=4 C.L.J. 102 and See No. 33-a, *supra*.

(41) S. 58 (b)—Creation, by occupancy raiyat on his non-transferable holding, of a *girby* (usufructuary) mortgage, effect of—Such mortgage falls within the definition of a usufructuary mortgage as defined in the section—See ACT VIII of 1860 (BENGAL RENT), No. 1, 3 C.L.J. 222.

Ss. 58, 59 & 100—See I, 889-890; Nos. 17 & 19.

Ss. 58, 67, 99—See I, 889, No. 18.

(42) S. 59—Attestation of mortgage-deed, evidence relating to—Burden of proof—Applicability of maxim '*Omnia rite esse agere*'.

Suit for foreclosure. Some of the original mortgagors admitted, while others denied,

Transfer of Property Act (IV of 1882).—(Continued).

execution of the mortgage-deed sued on. The first Court threw, on the plaintiff, the burden of proving the mortgage to be a valid one. The attesting witnesses were examined and they deposed that they saw the executants sign and that they attested the document but they were disbelieved by that Court, which, therefore, held the deed to be operative merely as a simple money-bond. The plaintiff appealed and the Divisional Judge held that, as the execution of the deed had been proved and the attestation was one *prima facie* duly made, it should be presumed valid unless there was definite evidence showing the contrary; and, that, as the burden of proof lay on the defendants and they had not satisfactorily discharged it, plaintiffs were entitled to obtain the foreclosure decree prayed for. On second appeal, it was further contended in support of the mortgagees that, S. 70 of the Indian Evidence Act is inconsistent with their being required to do more than prove execution by the mortgagor of a deed, which purports, on its face, to have been attested but that contention was overruled on the ground that there was no such inconsistency since the execution of a deed, to whose validity attestation is essential, designates the whole operation, including both the signature of the party and the attestation of the subscribing witnesses and S. 70 of the Indian Evidence Act lays down no rule as to the burden of proof, but, in a particular class of cases, makes proof of partial execution adequate as proof of complete execution. *Held*, also, that, where there is evidence on both sides as to the *factum* of attestation, the maxim "*omnia rite esse acta*" can only be resorted to, if at all, when the evidence on both sides is evenly balanced. The maxim operates when there is no evidence on either side, and possibly it may be used to eke out unconvincing testimony on one side only. In the present case, therefore, the decree of the lower appellate Court was reversed, since it had erroneously proceeded as if the maxim compelled the mortgagors to show that the attesting witnesses could not have seen the mortgagors sign the mortgage-deed. *Jhama v. Deobux*, 2 N.L.B. 10.

DRAKE-BROCKMAN, A.J.C.

(43) S. 59—See MORTGAGE (EQUITABLE MORTGAGE), No. 1, 10 C.W.N. 276 and No. 40, *supra*.

Transfer of Property Act (IV of 1902).
—(Continued).

(44) S. 59—*Mortgage-deed, execution of—Attestation, required by law—"Attest," "Attestation," meaning of—Signature of witnesses affixed by other person, with their consent—Marks, affixing of, absence of—Illiterate witnesses—Touching of pen, if sufficient.*

Per RAMPINI, J.—A deed required by law to be attested is properly executed, when the signatures of the witnesses are affixed, for them, to the deed, by another person, with their consent, they being illiterate and not able to write. It is not necessary that the witnesses should put their mark at the deed themselves, any such mark on the deed not being implied in the word "attest."

"To attest" means only to witness the execution of a deed and there is nothing to preclude the signatures of the witnesses, as in this case, from coming under the heading of attestation.

Per MOOKERJEE, J.—"To attest" is to be a witness to a fact, and it is not necessary that the witness attesting a document should sign his name personally (a).

A signature, as contemplated by S. 59 of the Act, need not be by the mortgagor personally, but, may be by some person acting on his behalf and under his authority. If the mortgagor is illiterate, it is a good signature, if, in the presence and at the request of the mortgagor, some other person signs the mortgagor's name on his behalf, as executant of the deed.

There is no distinction in this respect between the signature of the mortgagor and the attestation by the witnesses (b). *Sasi Bhushan Pal v. The Secretary of State for India in Council*, 4 C.L.J. 41=33 C. 861.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 9 M. and W. 404, 9 Q. R.D. 189, 4 Kl. and B. 459, R. (b) 24 A 319, R. and F., 2 C.W.N. 608, R. and Exp., 7 C.W. N. 180, 29 C. 749, R.

See, also, I, 891, No. 20.

Ss. 59, 100—See I, 891, No. 21.

(45) S. 60—*Mortgage—Effect of mortgages purchasing part of the property mortgaged—Redemption.*

Where a mortgagee acquires a part of the mortgaged property, and thus a fusion takes place of the rights of the mortgagee and the

Transfer of Property Act (IV of 1902).
—(Continued).

mortgagor in the same person, the indivisible character of the mortgage is broken upon and one of several mortgagors may, in such a case, redeem his own share only on payment of a proportionate part of the mortgage-money but he cannot compel the mortgagee to allow him to redeem the shares of other persons, in which he is not interested. *Kallan Khan v. Mardan Khan*, A.W.N. (1905), 225=28 A. 155.

BANERJI, J.

References.—2 A. 565, F. 17 A. 63, Refd. to. and 15 B. 24, Distd.

(46) S. 60—*Mortgage—Purchase of part of the mortgaged property—Mortgage foreclosed purchaser not being made a party—Right of purchaser to redeem part of the mortgaged property.*

The plaintiff's father purchased some *sir* land which, along with other property, was the subject of a mortgage by conditional sale. The mortgagee subsequently instituted a suit for foreclosure, in which they obtained a decree and an order absolute for foreclosure. But the mortgagees, although they had notice of his interest in the mortgaged property, did not join the purchaser as a party to their suit. *Held*, that there was no bar to the plaintiffs suing to redeem that portion of the mortgaged property in which their father had acquired an interest, and that they were not bound to redeem the whole mortgage. *Brij Kishore v. Madhe Singh*, A.W.N. (1905), 279=8 A.L.J. 27=28 A. 279.

AIKMAN, J.

(47) S. 60—*Mortgage—Foreclosure of a portion of the mortgaged property.*

Under S. 60 of the Act, if the mortgagees have acquired in whole or part the share of a mortgagor, a person interested in a share only of the mortgaged property may redeem his own share; and in such a case, the mortgagee also is entitled to foreclose such a share. *Inu Khan v. Maimuddin Sircar*, 3 C.L.J. 377.

GHOSE and PARCITER, JJ.

(48) S. 60—*See No. 70, infra.*

See, also, I, 891-892, Nos. 22 to 24.

Ss. 60 and 61—See I, 892, No. 23.

Ss. 60, 83, 95—See I, 892, No. 26.

(49) S. 61—*See MORTGAGE (GENERAL), No. 19, 8 A.L.J. 672.*

Transfer of Property Act (IV of 1882).
—(Continued).

See, also, I, Mortgage (Redemption), No. 21.

S. 65, sub-s. 5, cl. (b)—See I, 894, No. 28.

(50) S. 67—See Nos. 106 and 107, infra.

Ss. 67 (a) and 68 (b & c)—See I, Mortgage (Miscellaneous), No. 24.

Ss. 67, 90—See I, 895, No. 30.

(51) Ss. 67, 99—Enforcement of other claim against mortgaged property by suit under S. 67.

The claim of the plaintiff, under a money decree, which he sought by this suit to enforce, was one which arose independently of a usufructuary mortgage held by him and in respect of which he had attached the interest of the mortgagor. *Held*, that a suit, under S. 67, was the course to be adopted, while there was a subsisting attachment of the mortgagor's interest entitling the plaintiff to sue thereunder and, having regard to the object of S. 99, the decree to be made in such a suit should not be merely for the sale of the equity of redemption, but, should be for the sale of the property free from the mortgage-claim of the plaintiff, and the sale proceeds should be applied, in the first instance, to the discharge of the mortgages on the property in the order of their priority, and the surplus, if any, towards the satisfaction of the plaintiff's claim under the attachment, so far as may be necessary. *Govinda Bhatta v. Naraina Bhatta*, 16 M.L.J. 285—29 M. 424.

SUBRAHMANIA AIYAR and BENSON, JJ.

See, also, I, 896, No. 31.

(52) Ss. 68 (cls. a, b and c) and 73—Usufructuary mortgage, suit by—Property lost through mortgagee's default—

Where property mortgaged is lost owing to the default of the mortgagee, the mortgagee cannot sue for the mortgage-money (a).

Where in a usufructuary mortgage, the mortgagor binds himself to repay the money but there are reciprocal promises, and the mortgagee, by his own default, precludes himself from fulfilling his part of the contract for restoration of the property on satisfaction of the debt, the mortgagee cannot compel the mortgagor, under S. 68, cl. (a) of the Transfer of Property Act to fulfil his promise of repayment.

Clauses (b) and (c) of S. 28 provide for relief, where the mortgagee is deprived of his security

Transfer of Property Act (IV of 1882).
—(Continued).

otherwise than by his own fault. *Chitkall Kher v. Mathuralal*, 3 C.L.J. 220.

PRATT and BODILLY, JJ.

Reference.—Special Appeal No. 1792 of 1902 decided by RAMPINI and CASPERSZ, JJ. on the 5th May, 1905, R.

(53) S. 68 (b), suit under, whether maintainable by prior unregistered mortgagee deprived of security by wrongful act of mortgagor—Covenant to pay contained in the mortgage, effect of—subsequent registered sale deed by mortgagor to third party without notice, whether affects rights of prior mortgagee.

Where property, subject to an unregistered mortgage in favour of plaintiff, was conveyed by the mortgagor to the father of defendants 1 to 4, under a registered sale deed, and these latter re-sold it to the 5th defendant and all the defendants alleged that the sales were without notice of the mortgage to the plaintiff, and the plaintiff's personal remedy against the mortgagor under a personal covenant to pay was barred. *Held*, that the mortgagee (plaintiff) was deprived of his security by the wrongful act of the mortgagor and that he was entitled to sue the mortgagor for the mortgage-money under S. 68.

Such a right is not taken away by the personal covenant to repay contained in the mortgage deed. A purchaser under a registered sale deed has no priority over a prior unregistered mortgage, if he has notice of the same (a). *Appasami Thevan v. Virappa Thevan*, 29 M. 362.

WHITE, C.J.

Reference.—(a) 16 M. 148, R.

S. 68 (c)—See I, 896, No. 32.

(54) S. 72—Enhancement of revenue subsequent to mortgage—Payment of enhanced revenue by mortgagee—Liability of mortgagor to pay amount so paid by mortgagee—See MORTGAGE (REDEMPTION), No. 10, 3 A.L.J. 435.

See, also, I, 897, No. 33.

(55) S. 73 (a and b)—Redemption—Rights of mortgagee with possession as regards improvements made by him—Damages for planting of groves by tenants with mortgagee's permission, claim against mortgagee for—Mortgage, improvements.

Transfer of Property Act (IV of 1882).
—(Continued).

Under a deed of mortgage with possession, the mortgagee was put into possession of the mortgaged property and by the terms of the mortgage-deed was entitled to appropriate the entire profits in lieu of interest. There was a covenant between the parties that the mortgagor should be entitled to redeem and regain possession of the mortgaged property at the end of five years or subsequently on payment of the whole principal sum together with the arrears of advances to tenants (*lagari*), the cost of building new houses for tenants and other miscellaneous expenses such as advances of seed grain. The plaintiff having purchased the property from the mortgagor brought a suit for redemption. The Subordinate Judge found that the plaintiff was entitled to redemption on payment of the principal sum secured by the mortgage less certain sums on account of damages caused to the mortgaged property by the planting of groves by tenants and others in a number of plots of land with the mortgagee's permission, but allowed certain sums on account of cost of embankment, sinking wells, erecting houses for tenants, reclaiming barren land and survey.

Held, that as the mortgage-deed contained a distinct contract regarding the sums payable to the mortgagee on redemption, he was not entitled to add to the principal money any other sums spent by him for the improvement of the property under S. 72, cl. (a) and (b) of the Transfer of Property Act (a); that his claim to costs incurred for building houses for tenants was rightly allowed; and that the plaintiff's claim to damages for the planting of groves could not be maintained. **Thakur Jawahir Singh v. Thakur Sardar Kuar**, 9 O.C. 18.

SCOTT and RYVES, J. CS.

References.—(a) 26 C. 1 (P.C.), 21 Ch. D. 469 (476) and 19 M. 327, *Refd.* to.

(56) S. 73—Sale for arrears of revenue—Mortgage between date of default and date of sale—Extinguishment of mortgage-lien by the sale—Charge on sale proceeds.

Where an estate is sold for arrears of revenue the mortgage of a share of such estate between the date of default and the date of sale is invalid as against the purchaser and the mortgage-lien on the property is extinguished by the sale (a). That lien, having been extinguished so far as it existed on the property itself, is transferred as a charge to the sale proceeds (b) and,

Transfer of Property Act (IV of 1882).
—(Continued).

under S. 73 of the Act, the mortgagee becomes entitled to recover his mortgage-debt out of those sale-proceeds after payment of the arrears of revenue. The section must be taken to apply to any case where the effect of the sale is that the lien on the mortgaged property in favour of the mortgagee has been extinguished owing to a sale of that property through the failure of the mortgagor to pay an arrear of revenue or rent. **Umatara Gupta v. Uma Charan Sen**, 3 C.L.J. 52.

BRETT and MOOREJEE, JJ.

References.—(a) 17 C. 148, P. (b) 15 C. 546, *Exp.*

(57) S. 73—Surplus sale-proceeds on sale of mortgaged property for arrears of Revenue, right of mortgagee to enforce his charge on.

Property which had been mortgaged to the plaintiff, in this case, was subsequently sold under a decree in a rent suit and a surplus was left, of the sale proceeds, after paying off the arrears of rent and it was *held*, that, under the provisions of S. 73 of the Act, plaintiff had the right to enforce his charge on the surplus proceeds and that there was nothing in Ss. 159 and 161 to 167 of the Bengal Tenancy Act to prejudice such right of the plaintiff as mortgagees **Gobind Sahai v. Sibdu Ram**, 38 C. 878.

MACLEAN, C.J. and GEIDT, J.

(58) S. 73—See No. 52, *supra*.

(59) S. 73—Sale of mortgaged property at the instance of the first mortgagee—Lien of subsequent mortgagees on surplus sale-proceeds—See MORTGAGE (SALE), No. 1, 9 C. W. N. 983.

S. 74—See I, 897, No. 35.

Ss. 74, 83 and 86—See I, Mortgage (Foreclosure), No. 5.

S. 78—See I, Laches, No. 3.

(60) S. 81—See No. 70, *infra*.

(61) S. 82—Purchase of the mortgage-deed by the holder of the interest of one of the mortgagors, effect of—Reduction of the mortgage-debt in proportion.

Where the holder of the interest of one of the mortgagors in one of several mortgaged properties, subsequently purchases the whole mortgage-deed, the mortgagee is satisfied to the extent of the proportion which the value of the mortgaged property purchased by him bears to the value of all the properties mortgaged.

Transfer of Property Act (IV of 1902).
—(Continued).

Wherever there is a confluence of the estates of the mortgagor and the mortgagee in the same person, the mortgage-debt is extinguished in proportion to the extent of the mortgaged property acquired by the mortgagee, and the mortgagee or his assignee can only recover the balance of the mortgage-debt from the other properties mortgaged. **Harendra Kumar Guha v. Dindyal Saha**, 4 C.L.J. 105.

GHOSH and CASPERSZ, JJ.

(62) S. 82—See MORTGAGE (CONTRIBUTION), No. 3, 8 A.L.J. 141 and Nos. 86, *supra* and 70, *infra*.

See, also, I, 898, No. 39 and Mortgage (Extinguishment), No. 1.

Ss. 82, 56—See I, 898, No. 40.

(63) Ss. 82, 89—Order absolute—Notice—Contribution—Purchase by mortgagee—

No notice is necessary to be given to the mortgagor before an order absolute for sale is made under S. 89 of the Act.

Where certain properties, along with others, are subject to two mortgages in favour of the same person, and the mortgagee has purchased and obtained possession of such properties, in a sale in execution of his decree on the first mortgage, such properties are liable to contribute to the discharge of the second mortgage-debt, and when a decree is obtained upon the second mortgage and sought to be executed, there must be a deduction, from the amount of the second decree, of the sum payable as such contribution (a). **Mahomed Taki Raza v. W. A. Thomas**, 4 C.L.J. 817.

BRETT and GUPTA, JJ.

References.—(a) 22 A. 284, 18 M. I.A. 404 and 4 C. 475, F.

(64) Ss. 82, 95—Contribution, suit for, principle of—Mortgage-decree—Payment of mortgage-debt by one of two co-mortgagors, to save property from sale—Purchasers of equity of redemption—Assignees of property from permanent lease-holder, right of—Lien over mortgaged properties—Interest on the money paid to save property, if may be higher than that provided for in the mortgage-bond—Personal decree—Charge—Equitable lien.

The principle upon which contribution is claimed by, and is allowed to, one co-sharer of a property against another, when the former

Transfer of Property Act (IV of 1902).
—(Continued).

discharges a joint-debt, is well-known principle, viz., that parties who are equally bound to pay a common debt and who are relieved of the burden of that debt by one of them, should reimburse him of all that he has paid in excess of his proper share of the debt.

A *puisne* incumbrancer, who pays of a prior mortgage, is entitled to be placed in the position of a prior mortgagee, if his intention was not to extinguish the prior lien (a).

The same principle applies in a case where one of two co-mortgagors pays off the entire mortgage-debt and claims to be in the position of the mortgagee, for the purpose of obtaining contribution from his co-mortgagor (b).

The same principle does not, however, apply to persons, who are not co-mortgagors, but are the assignees of a *mokarari* interest granted by the mortgagor himself, and they are not entitled to claim the same lien, as against the shares of the co-mortgagors, as the co-mortgagors. They are entitled only to a personal decree.

Co-mortgagors who have purchased the equity of redemption of the shares in the property of some of the mortgagors and have saved the property from sale, by paying the balance of the entire mortgage-debt, are not bound by the covenant as to the rate of interest as provided in the mortgage-bond. The liability of the defendants to pay the contribution-money to the plaintiffs, arises upon very different considerations from those which existed at the time of the execution of the mortgage-bond, and it is not right and proper to refuse to the plaintiffs the ordinary rate of interest at 12 per cent per annum, which, in a case like this, the Court allows. **Raushan Ali Khan Chowdhury v. Kali Mohan Mitra**, 4 C.L.J. 79.

GHOSH and CASPERSZ, JJ.

References.—(a) 10 C. 1085, R. (b) 4 A. 458, 26 B. 879, 26 A. 407 (416), R., 34 C. 800; D., 9 C.W.N. 865, Exp. and D.

Ss. 82, 95, 100—See I, 899, No. 41.

(65) S. 83—Amount due under mortgage deposited by mortgagor—Conditions prescribed by the section to be complied with for the amount to become the property of the mortgagee.

Money deposited in Court by a mortgagor, under this section, for payment to the mortgagee, becomes the property of the mortgagee,

Transfer of Property Act (IV of 1922).*—(Continued).*

only on his compliance with the conditions prescribed by the section as conditions precedent to his drawing the money out of Court. So, the amount is not liable to be attached by a creditor of the mortgagee, unless he has stated his willingness to accept the amount deposited in full discharge of the mortgage-money and has deposited the mortgage deed in Court. **Mothiar Mira Taragan v. Ahmatti Ahmed Pillai**, 20 M. 282.

BENSON and MOORE, JJ.

(66) S. 85—*Property comprised in the mortgage, meaning of—Suit to enforce mortgage—Necessary parties to such suit—Frame of suit—Hostile and paramount title to mortgagor and mortgagee if may be enquired into in such suit—*

The only persons who are proper parties to suit to enforce a mortgage are persons having an interest in the property comprised in the mortgage, that is, the interest which the mortgagor is competent to transfer by way of mortgage at the date of the transaction.

The term 'property' used in S. 85 of the Transfer of Property Act in the phrase "property comprised in the mortgage," indicates not the actual physical object but denotes merely the rights in such object which form the subject matter of the transaction (a). **Jajneswar Dutt v. Bhuban Mohun Mitra**, 3 C.L.J. 205=38 C. 425.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 1 C.L.J. 337, F. 13 A. 432, Diss.

(N.B.)—See, further under the heading **MORTGAGE (GENERAL)**, No. 3, 3 C.L.J. 205.

(67) S. 85—See **CIVIL PRO. CODE**, No. 49, 7 Bom. L.R. 811.

(68) S. 85—*Parties—Suit for foreclosure—Portion of property exempted—Persons interested in the property exempted—Not necessary parties.*

Held, per STANLEY, C.J., that a plaintiff in a suit for foreclosure is entitled to exempt from his claim the portion of the property which belongs to persons, who were not impleaded in the suit. He is not bound to attempt to enforce a claim against property, the title to which was in dispute or was doubtful (a).

Per BANERJI, J.—Where several properties are mortgaged to the same mortgagees for the same

Transfer of Property Act (IV of 1922).*—(Continued).*

debt, each of these properties is liable, as between the mortgagor and the mortgagee, for the whole of the debt, and the mortgagee has a right to recover the debt from any part of the property. There is no obligation on him to proceed against the whole of the property (b). In the same way, he is equally competent to sue for foreclosure of a part of the mortgaged property.

In the case of a mortgagee by way of conditional sale, if a mortgagee thinks that a part of the mortgaged property would be sufficient to cover the amount of his mortgage, there is no reason for forcing the whole property on him. The abandonment by a mortgagee of a portion of the mortgaged property cannot work any injustice except where the mortgagee has purchased a portion of the same himself (c).

The object of a suit for foreclosure being to put an end to the equity of redemption, only those persons are necessary parties to the suit, who have the right of redemption of the property sought to be foreclosed (d).

Per RICHARDS, J.—In a case of simple mortgage, the mortgagee can omit from his suit any part of the mortgaged property and the owners of the equity of redemption of the property omitted need not be made parties. There is no distinction between a suit to enforce a simple mortgage and a suit for foreclosure. **Shee Tahal Ojha v. Sheedan Rai**, 2 A.L.J. 680 (F.B.)=A.W.N. (1905), 244=28 A. 174.

STANLEY, C.J., and BANERJI and RICHARDS, JJ.

References.—(a) 2 A. 906, Diss. (b) 25 A. 79, A.W.N. (1898), 120, Refd. to. (c) 2 A. 905, Diss. and (d) 2 A.L.J. 622=A.W.N. (1905), 156, F.

(69) S. 85—A mortgage-deed could not bind persons of whose interest a mortgagee had notice and whom he omitted to implead in his suit as required by this section—See **HINDU LAW (JOINT FAMILY)**, No. 4, 3 C.L.J. 12.

See, also, I, 899-908; Land Revenue Act, No. 2; and Mortgage (Extinction of Security), No. 1.

(70) Ss. 85, 81, 82, 95, 86, 60—*Mortgagee not compellable to distribute the debt among the mortgaged properties or to marshal to his prejudice—Right of contribution, when obtains in respect of properties not comprised in suit—Powers of Court in introducing*

Transfer of Property Act (IV of 1902).
—(Continued).

unnecessary complications under S. 85 and in executing mortgage-decree—When marshalling can be exercised.

Where joint family property of the mortgagor and his two nephews is mortgaged to secure a family debt, and afterwards the equity of redemption in the shares of the mortgagor and one of the nephews is sold away by the mortgagor, there is nothing in the Act to suggest the view that, as between a mortgagee and the purchasers of the equity of redemption, the former can be compelled to distribute his debt, rateably upon the mortgaged property, so as to entitle the purchasers to insist upon their interest not being proceeded with, until after the unsold portion of the mortgaged property has been proceeded against (a). The mortgagee's right to be paid the whole of his debt, from whatever portion of the mortgaged properties he wishes to comprise in his suit, cannot be questioned. In the event of the purchasers being obliged to pay the whole debt and being able to show that the unsold share is also liable, they would be entitled to contribution from the unsold share, notwithstanding its non-inclusion in the mortgagee's suit (b).

The rule, that all persons interested in the actual subject of the suit should be before the Court, in order that, as between them, complete justice might, as far as possible be done, cannot be taken as authorising a Court to complicate a suit by a mortgagee, by introducing into it controversy, in which the mortgagee, is really not interested.

If the action of a mortgagee has had the effect of extinguishing the mortgage lien, upon any portion of the mortgaged property, so as to relieve it from the liability to bear its proportion of the debt, he cannot recover more than what the property he proceeds against would be rateably liable for. And where a mortgagor conveys not merely the equity of redemption in a portion of the mortgaged property, but the property itself, free from any liability to contribute to the mortgage debt, the purchaser may insist upon the mortgagee proceeding, in the first instance, against the mortgaged property which is unsold in the hands of the mortgagor.

But where the purchasers have not purchased it free from the mortgage and where the share not proceeded against is not in the hands of the

Transfer of Property Act (IV of 1902).
—(Continued).

mortgagor, and is the property of a third party, who is sought to be affected by a transaction entered into by another, purporting to act under the power incident to the position of the mortgagor of a joint family, the doctrine of marshalling does not apply. Nor does it apply so as to compel a mortgagee to proceed against a security which may be insufficient, or doubtful, or may involve him in litigation to realise.

As regards the execution of a mortgage decree, it is quite competent to the Court to exercise its control so as to bring to sale, in a particular order, the different items of property comprised in the decree, with a view properly to adjust the equities possessed by the parties before it (c) (*obiter*). **Krishna Ayyar v. Muthukumarasawmya Pillai**, 29 M. 217.

WHITE, C.J., and SUBRAHMANYA AYYAR, J.

References.—(a) 5 M. 385, R. (b) 2 A. 807 and 20 D. 615, F. (c) 9 C. 406, D.

Ss. 85, 86, 88 and 89—See I, 902, No. 51.

(71) *Ss. 85, 96—Prior mortgagee, express reservation in a mortgage decree of the admitted rights of a, necessity of—Decree to be construed with reference to pleadings and admissions.*

Granting, though it is open to doubt, that a mortgage suit in which all the parties admit the existence of, and raise no dispute about a prior incumbrance in favour of a person, not impleaded in the suit is liable to be dismissed as one framed in contravention of S. 85 of the Act, there is yet nothing in the provisions of the Act, which requires that the decree in such a suit should, in terms, reserve the rights of such prior incumbrancer and should expressly order the sale to be subject to such rights and S. 96 of the Act cannot be construed as implying that whenever property is not to be sold free from a prior mortgage, the decree should reserve the prior mortgagee's rights in express terms even when such rights have to be admitted and undisputed and his rights therefore will be left unaffected by the omission to make a special reservation of them in the decree itself. Further where the plaintiff has claimed for relief only subject to such admitted rights, the decree cannot possibly be construed as if the Court had granted him larger relief than he himself asked for. The decree might have clearly provided that the mortgaged property should be sold subject to the prior mort-

Transfer of Property Act (IV of 1882).

—(Continued).

gage and the proper course to be observed in drawing up a decree is that pointed out in *Lachmi Narain v. Jwala Nath* (a) still, in construing a decree, admission in the pleadings or in the course of the case should not be ignored and, the decree taken as a negating any right which was conceded by all parties, and in respect of which there was no necessity for the Court to make reference in terms in the decree, provided such a construction does not infringe any statutory provision. **Srinivasa Row Sahib v. Yamunabhai Ammal**, 29 M. 84 = 16 M.L.J. 50.

SUBRAHMANYA AIYAR, C.J. and BENSON, J.

Reference.—(a) 18 A. 344 (347), R.

(71-a) S. 84—See No. 27, *supra*.

(72) S. 86—*Mortgage by conditional sale—Decree—Informal and irregular—Execution—Order absolute—Delivery of possession.*

Where in a suit upon a mortgagee by conditional sale, the plaintiff mortgagee prayed that the defendant should be debarred from the right to redeem in case the money was not paid within a certain time, and the Court passed a decree in the following terms, "that the claim be decreed with costs, with interest at 6 per cent. per annum; that the defendant do pay to the plaintiff the decretal money within two months:"

Held, that the decree, though irregular as to the form, was, in effect, a decree for foreclosure within the meaning of S. 86 of the Transfer of Property Act.

Held, further, that after the decree had been made absolute and no appeal laid against the decree absolute, it was not open to the defendant to object to the delivery of possession to the plaintiff. **Jogendra Chandra Roy v. Rama Nath Bhattacharya**, 4 C.L.J. 593.

RAMPINI and HARRINGTON, JJ.

(72-a) S. 87—See Nos. 27, *supra* and 95, *infra*.

See, also, I, 903, No. 53.

Ss. 86 and 88—See I, 904, No. 53.

Ss. 86 to 88—See I, 904, No. 54.

Ss. 86 and 87—See I, *Limitation Act*, I, No. 131.

Ss. 87, 89—See I, 905, No. 56.

Transfer of Property Act (IV of 1882).

—(Continued.)

(73) Ss. 87, 89—*Mortgage, redemption of—Right of redemption after the decree absolute—Mistake of the Court in drawing up the decree, form of order.*

In the case of a mortgage by way of conditional sale, until an order in terms of paragraph 2 of S. 87 of the Act is made by the Court on an application by the mortgagee, debarring the mortgagor absolutely from redeeming the property, the mortgagor is entitled to redeem, even though an order absolute in terms of S. 89 has been made. **Alimesa Chowdhuri v. Roshun Ali Matbar**, 3 C.L.J. 593.

(GHOSE and HOLMWOOD, JJ.)

References.—27 C. 705, 16 C. 246, 22 M. 133, F.

(74) S. 88—

Under a decree, as provided by the Transfer of Property Act, interest should be calculated on the basis of the bond from the date of the bond up to the date fixed by the decree for the repayment of the money due (a). **Brojo Lal Rai Chowdhury v. Tara Prasanna Bhattacharji**, 3 C.L.J. 188.

RAMPINI and MOOKERJEE, JJ.

Reference.—(a) 29 C. 43 (51), R.

(75) S. 88—*Mortgage—Interest, rate of, due from the date fixed by the decree for payment up to date of realisation.*

S. 88 of the Transfer of property Act does not limit the interest at the contract rate to the date fixed by the decree for payment of the principal and interest, nor does it preclude the interest from extending over the time down to realisation of the entire amount due. **Raja Balwant Singh v. Amolak Ram**, 3 C.L.J. 85 = 1 M.L.T. 65 (P.G.) = 28 A. 228 = 16 M.L.J. 160.

LORD MACNAGHTEN, SIR FORD NORTH, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

(76) S. 88—Application by owner objecting to sale in execution of property comprised in a decree under—Order in appeal, no appeal lies to High Court from—See Civ. Pro. Code, No. 121, A.W.N. (1900), 62.

(77) S. 88—Property subject to charge—Suit maintainable.

In a suit for sale on foot of a mortgage of properties subject to a charge for maintenance,

Transfer of Property Act (IV of 1902).*—(Continued).*

held that the plaintiff did not occupy the position of a second mortgagee and could maintain the suit. The person entitled to maintenance from the properties had a charge thereon and was not a mortgagee. *Lalman v. Mohar Singh*, 8 A.L.J. 848.

STANLEY, C.J. and BURKITT, J.

Reference.—18 A. 492, *Distd.*

(78) *Ss. 88 and 89—Civil Pro. Code, S. 248—Order absolute for sale—Minor defendant—Guardian dead—Notice of order not served—Effect of.*

A decree was passed against R, under the guardianship of his mother, for sale of property. One year after the decree, an application was made for an order absolute. Notice was issued to the mother under S. 248 of the Civ. Pro. Code, but it was found that she was dead. No other guardian was appointed, and the decree was made absolute without notice. The decree holder applied for execution of the decree. R objected.

Held, that, R being properly represented in the suit in which the decree under S. 88 of the Transfer of Property Act was passed, he could not question the validity of the decree. The order under S. 89 of the Transfer of Property Act only made that decree absolute. So long as that order subsisted, it was enforceable, and its validity could not be impugned in the execution department. If the order was defective, the remedy of R was to get it set aside in accordance with Law. *Ram Jas v. Shree Prasad*, 2 A.L.J. 640=A.W.N. (1905), 241=28 A. 193.

BAKERJI and RICHARDS, JJ.

References.—18 A. 278, *Refd. to.* 3 A. 424 and 21 C. 19, *Distd.*

(79) *Ss. 88 & 89—Order absolute for sale—Application for execution—Limitation—Duty of Court on receiving application for order absolute—Pendency of application—Limitation.*

Plaintiff applied to the Court of first instance, for an order absolute for sale, under S. 89 and the Court merely made an order "decree made absolute". More than three years from the date of that application, plaintiff made an application for execution, to which, however, the defendant (judgment-debtor) pleaded limitation, on the ground that this application was

Transfer of Property Act (IV of 1902).*—(Continued).*

made more than three years after the application for order absolute, which was an application for execution. *Held*, that the Court, having passed the order absolute, was bound, also, to order that the mortgaged property be sold and the proceeds dealt with as mentioned in S. 88. The Court having omitted to pass any such order, the earlier application should be considered to be still pending and the later application should be treated as a part or continuation of the earlier and that there was, therefore, no bar by limitation.

It is wrong to hold that, until the passing of an order absolute for sale, the decree in a mortgage-suit is incapable of execution, and that time would not begin to run till the date of the order absolute for sale. 25 M. 244 (a) is to the effect that a decree under S. 88 is capable of execution and that an application under S. 89 is only an application for the execution of that decree. *Talapoori Appiah v. Waram Reddi, Rami Reddi*, 1 M.L.T. 294=16 M.L.J. 508.

MOORE & SANKARAN NAIR, JJ.

Reference.—(a) 25 M. 244, *F.*

Ss. 88 and 89—See I, 906, Nos. 57 and 59; and Limitation Act, No. 132.

Ss. 88 and 90—See I, Limitation Act, No. 135.

(80) *S. 89—Execution of decree—Payment into Court of decretal money and costs—Stay of sale—Civil Pro. Code, S. 291.*

Where the sale of mortgaged property has been directed by an order absolute under S. 89 of the Transfer of Property Act, 1882, it is open to the person holding the equity of redemption in such property to pay, into Court at any time before the sale, the amount of the decretal debt and costs, and thereupon the execution-proceedings will cease. It is not necessary that the person holding the equity of redemption should wait until the property is actually put up for sale. *Miri Lal v. Mithu Lal*, A.W.N. (1905), 168=28 A. 28.

KNOX, J.

References.—19 A. 209 and 20 A. 354, *F.*, 31 C. 868, *Refd. to.*

(81) *S. 89—Discharge of an anterior encumbrance after Court-sale of property—Right of person discharging—Order absolute for sale, effect of.*

Transfer of Property Act (IV of 1932).
—(Continued).

In the absence of clear proof to the contrary, it is to be taken that, when the money of a person interested in immovable property, as for example, the owner of the equity of redemption of a puisne mortgagee, goes to discharge an anterior encumbrance affecting it, the presumption is that the anterior encumbrance cures to the advantage of the party making the payment, if it is for his benefit so to treat it.

So, where, after sale of properties in execution of a decree, a person advances money to the judgment-debtor to enable him to set aside the sale under S. 910 A, the said presumption arises and may be inferred as well from the terms of the instrument under which the loan has been made, *viz.*, the recitals therein as to the decree, the execution thereunder and the loan being for the discharge of the debt (a).

On a contention raised, in this case, that, on the passing of the order absolute for sale, the mortgagee's security became extinguished by virtue of the provision to that effect at the end of S. 89 of the Transfer of Property Act, and the decree-holder and the judgment-debtors came, thereafter, to be precisely in the position of parties to a simple money-decree and, that, therefore, the payment in question to the judgment-debtor could not operate to confer any right of him on the lender, *held*, the construction of the provisions of S. 89 (b) as contended for would upset completely one of the main principles underlying the law of mortgages *viz.*, that the effect of a sale in execution of a mortgage-decree is to vest in the purchaser, at such sale, the property as it stood at the date of mortgage, and, therefore, free from that and all subsequent encumbrances (c). The right of the purchaser and the mortgagee came, therefore, be protected only by postulating the continuance of the lien down to the time of the sale, and the transfer of it thereafter to the sale proceeds. **Yanamikalinga Mudali v. Chidambaram Chetty**, 29 M. 37.

SUBBRAHMANYA AIYAR, OFFG.C.J. and BODHAN, J.

References.—(a) 10 C. 1035, R. and F. (b) 25 M. 244 at p. 281, R. and (c) 29 I.A. 9, R. and F.

(82) S. 89—Refusing to make order absolute for sale—Ground for—Appeal from preliminary decree, pendency of—Time, extension of.

Transfer of Property Act (IV of 1932)
—(Continued).

The pendency of an appeal against a decree under S. 89 of the Act is, of itself, no ground for refusing to make an order absolute for sale under S. 89 of the Act.

A Court has no power, of its own motion, to extend the time provided in S. 89, for making an order absolute. **Ram Golam Lal Sahu v. Chowdhry Babu Barsati Singh**, 10 C.W.N. 910.

BRETT and MITRA, JJ.

(83) S. 89—See Nos. 63, 73, 78, 79, *supra*.

See, also, I, 907, No. 61 and Limitation Act, No. 11.

(84) Ss. 89 and 90—Sale of part of mortgaged property with judgment-debtor's consent in England—effect of suit in Chancery Court—Limitation.

Certain shares in a Railway belonging to the defendant were ordered to be sold under S. 89 of the Act. At the request of the defendants, they were sent to England for sale through a broker. The defendant gave a power of attorney in favour of the Bank and also gave the stock certificate. The Railway Company declined to act on the power of attorney or the transfer in bank. The bank instituted a suit in the Court of Chancery in England and obtained a decree for sale and sold the stock. The proceeds of sale having proved insufficient, the Bank put in the present application for a decree under S. 90.

Held, that the sale, which took place in England, must be treated to be a sale had, in connection with the decree passed in this country but carried out by the parties independently of the Court in this country at the express instance of the defendants, judgment-debtors, and that they could not be heard to say that the sale was not in pursuance of the order for sale passed under S. 89.

Held, further, that unless the Railway stock was sold, the defendants could successfully object to the application under S. 90. The stock having been sold, the decree under S. 90 should be passed. **Gajadhar Lal v. Alliance Bank of Simla**, 3 A.L.J. 445=28 A. 660.

STANLEY, C.J. and BANERJI, J.

References.—A.W.N. (1899), 208 and 22 A. 404, R.

(85) Ss. 89 and 90—Mortgage—Release of portion of mortgaged property—Sale of re

Transfer of Property Act (IV of 1882).
—(Continued).

maining portion—Unsatisfied balance of mortgage-decree—Application for a personal decree—Condition precedent to such a decree.

A mortgagee released certain portions of the mortgaged property, without the consent of the mortgagor, upon receipt of a sum of money, in part-satisfaction of the mortgage-debt, from purchasers, to whom such portions had been transferred, and obtained a decree for the balance against the mortgagor, in pursuance of which, the unreleased portions of the property were sold. The proceeds being found insufficient to satisfy the decree, the mortgagee applied for a personal decree for the balance against the mortgagor.

Held—That the condition precedent to enable a Court to pass a decree under S. 90, viz., the sale of the whole or a sufficient portion of the mortgaged property, had not been satisfied in this case. A mortgagee may not release a portion of the mortgaged property from the debt, without the mortgagor's consent, so as to impose upon the mortgagor a personal liability to which he would not otherwise be subject. There is nothing to show that, if the whole property had been sold, it would not have been sufficient to pay off the whole mortgage debt.

A mortgagor may claim to have the entire mortgaged property sold before a personal decree can be passed against him (a). **Raja Ramvanjan Chakrabutty v. Indra Narayan Das**, 10 C.W.N., 862 = 33 C. 890.

MACLEAN, C.J. and GEHDT, J.

Reference.—(a) 25 A. 79, Diss.

(86) Ss. 89 and 90—Execution of decree—Mortgage—Order absolute for sale of part only of the mortgaged property—Property sold insufficient to satisfy the mortgage-debt—Application for personal decree against mortgagor.

A mortgagee in a suit for sale of the mortgaged property obtained a decree for sale of the whole; but, when applying subsequently for an order absolute for sale, relinquished his claim as against part of the mortgaged property and took an order for sale of part only, and that order became final. The property ordered to be sold was brought to sale, but realized an amount insufficient to satisfy the decree. *Held*, that the decree-holder was, under these circumstances, competent to apply for and obtain a

Transfer of Property Act (IV of 1882).
—(Continued).

personal decree against the mortgagor under S. 90 of the Transfer of Property Act, 1882. **Ghafur Hasan Khan v. Muhammad Kifayat-ul-lah Khan**, A.W.N. (1905), 165 = 2 A.L.J. 419 = 28 A. 19.

KNOX, and AIKMAN, JJ.

Reference.—25 A. 79, F.

See, also, I, 907, Nos. 63 and 64.

(87) S. 90—Sale of property—meaning of.

The words 'such sale', referred to in S. 90 of the Transfer of Property Act, mean a sale of property directed to be sold by the decree under S. 89 and the order absolute under S. 89. Hence, where the property mortgaged was *malikana* rights in certain zemindari, but by mistake the decree directed the sale of the zemindari which was sold, *held*, that the provisions of S. 90 were complied with and the decree-holder was entitled to a personal decree. **Shiam Sundar Lal v. Ganesh Prasad**, 3 A.L.J. 465 = A.W.N. (1906), 205 = 28 A. 674.

STANLEY, C.J. and BANERJI, J.

Reference.—25 A. 79, Appl.

(88) S. 90—See *RES JUDICATA*, No. 7, 3 A. L.J. 171, Nos. 84, 85 & 86, *supra*.

(89) S. 90, effect of decree under for purposes of limitation—See *LIMITATION ACT*, No. 128, 3 C.L.J. 291.

(90) S. 90, application under—Bond payable by instalments—See *LIMITATION ACT*, No. 54, 3 A.L.J. 468.

(91) S. 90, application under, whether a step in aid of execution of a mortgage-decree—See *LIMITATION ACT* (XV OF 1877), No. 188, 4 C.L.J. 141 = 33 C. 867.

(92) S. 90—'Legally recoverable', meaning of—See *MORTGAGE (GENERAL)*, No. 11, 4 C.L.J. 246.

(93) S. 90, application to set aside *ex parte* decree under—See *CIV. PRO. CODE*, No. 78, 9 O. C. 288.

See, also, I, 908-909; and *Mortgage (Sale)*, No. 16.

S. 91 (6)—See I, 909, 910, Nos. 69 and 70.

(94) S. 92—Jurisdiction of Civil Courts—lease by mortgage—lease expires on redemption.

When a mortgage is redeemed, a mortgagee is bound to re-transfer the property free from the mortgage and all other incumbrances creat-

Transfer of Property Act (IV of 1882).
—(Continued).

ed by him. Where, therefore, he has transferred a portion of the mortgaged land under a lease, the lease comes to an end when the mortgage is redeemed.

The relation of landlord and tenant does not exist between the mortgagor and the mortgagee's lessee, and a suit to eject the mortgagee's lessee lies in a Civil Court. **Ram Chand v. Raj Hans**, 3 A.L.J. 517 = A.W.N. (1906), 241.

AIKMAN, J.

(95) *Ss. 92, 93, and 67—Mortgage by conditional sale, decree for redemption of—Right of mortgagee to foreclosure—Enlargement of time to mortgagor for payment, application for, if entertainable after due date—Power of Court to grant enlargement, distinction as to, between suits for foreclosure and those for redemption—Duty of mortgagor, to show cause for enlargement of time.*

It was contended, in this case, that a mortgagor, who in a redemption suit allows the time fixed for payment to pass, without paying the decretal amount or applying for postponement of that date, becomes *ipso facto* debarred from redeeming (a) and it was held that S. 93 of the Act compels the Court—once the date originally fixed for payment has passed without payment in full—to make an order of foreclosure absolute, but at the same time allows it, upon good cause shown and upon such terms, if any, as it thinks fit, from time to time, to postpone the date. Since, in such a case, the mortgagee has, *prima facie*, an immediate right to foreclosure absolute, where the mortgagor comes with the money after the due date, the burden is upon him to explain satisfactorily why he did not bring it punctually. In any other view, a mortgagor, who wilfully allows the due date to pass would be in a better position than one who applies before due date (b). So, a mortgagor, who meets an application for an order of foreclosure absolute, is bound to show good cause for his failure to pay on due date and obtain an order extending the time so as to include the actual date of lodgment (c).

The proviso to S. 93, properly construed, cannot support the contention that the power to enlarge time for payment can be exercised by Courts only before the day fixed for payment, by the decree itself. The language of the whole

Transfer of Property Act (IV of 1882)
—(Continued).

proviso does not demand that a limited meaning should be attached to it and, as the procedure prescribed by it is borrowed from the practice of the English Courts, it must be construed by the light of that practice, according to which applications for enlarging the time fixed in the decree for redemption are entertained even after the expiry of the prescribed period (d).

In England, the time fixed for payment will not, as a rule, be enlarged in a redemption action; unless *special grounds* for such indulgence are shown (e), while in an action for foreclosure, the Court is more lenient and will enlarge the time on terms pending an appeal. Though this distinction is not to be found on comparing S. 87 with S. 93 of the Act (f), yet it would be in accord with the principles of equity to grant indulgence less readily to mortgagors, who have sued for redemption, than to those against whom a suit for foreclosure has been brought. **Nand Lal v. Ram Ratan Lodhi**, 2 N.L.R. 137.

DRAKE-BROCKMAN, J.A.J.C.

References:—(a) 19 M. 40 and 25 M. 44, *Disc.* (b) 25 M. 244 (at p. 289), *R.* (c) 65 L.J. Ch. 375, *F.* (d) 9 L.J. Ch. 113, 22 B. 771, 26 B. 121 and 28 B. 103, *F.* (e) 19 A. 180, 16 C. 246 and 27 C. 705, *R.* (f) 19 M. 40, *R.* 21 C. 618, 22 M. 133, 24 A. 479, 25 A. 231 and 16 C. P.L.R. 111, *R.*

(96) *Ss. 92, 95—Co-mortgagor redeeming the entire property, position of—Limitation Act, arts. 144 and 148—Adverse possession—Redemption from the co-mortgagor, who has redeemed the entire property.*

Held, that, when one of the several co-mortgagors redeems the entire property, it cannot be said that he has the same rights and stands exactly in the same position as the mortgagee with regard to the share of his co-mortgagors. The debt in the case of such a payment is entirely discharged and the mortgage is redeemed; and the redeeming co-mortgagor has no right in the shares of his co-mortgagors other than that of a charge on those shares for the money paid for redemption and the proper costs incurred in so redeeming (a).

Held, further, that the limitation for redeeming the property from the hands of such a co-sharer is that of 12 years provided for by art. 144 of the Limitation Act and the limitation runs from the date when the redeeming co-mort-

Transfer of Property Act (IV of 1882).

—(Continued).

gnor sets up his adverse possession. **Makhdum Khan v. Musammat Jadi**, 9 O.C. 91 (B).

SCOTT and RYVES, J. CS.

References.—(a) 14 A. 1, Diss., 26 B. 500, F.

(97) S. 93—Mortgage—Redemption—Enlargement of time—Jurisdiction of appellate Court.

Although the Court of first instance is the proper Court for dealing with applications under the last paragraph of S. 93 of the Transfer of Property Act, 1882, the appellate Court nevertheless has jurisdiction to allow the enlargement of time in cases where there has been an appeal. **Babu Parshad v. Khiali Ram**, A. W.N. (1906). 203 = 3 A.L.J. 828.

RICHARDS, J.

(97-a) S. 93—See No. 95, *supra*.

(98) S. 93—

—of the Act should not be so strictly construed as to limit its operation to mortgages under which possession passes, and, therefore, no redemption, properly repasses. It is more reasonable to construe the section distributively, to make the condition of obtaining possession apply only to the cases in which its fulfilment is, from the nature of the mortgage, possible, and in other cases to make the charge follow upon redemption. **Malik Ahmad Wali Khan v. Musammat Shamsi Jahan Begam**, 10 C.W. N. 626 (P.C.) = 3 C.L.J. 481 = 8 Bom. L.R. 397 = 3 A.L.J. 360 = 1 M. L. T. 143 = 16 M.L.J. 269 = 28 A. 482.

LORD DAVEY, SIR FORD NORTH, SIR ANDREW SCOTLE, and SIR ARTHUR WILSON.

(99) S. 95—See Nos. 36, 64, 70 and 96, *supra*.

(100) S. 96—See No. 71, *supra*.

(101) S. 98—Application of, to anomalous mortgages executed before the Act—*Ubhaya-pattam* mortgage—See MORTGAGE (REDEMPTION), No. 17, 16 M.L.J. 462.

(102) S. 99—Mortgage—Suit for sale—Compromise resulting in a money-decree—Mortgagee not competent to sell mortgaged property in execution of such decree.

A mortgagee brought a suit for sale on his mortgage. The suit was compromised, and the mortgagee took a money decree in which, however, the property originally hypothecated to him was set out as being charged. Held, that the mortgagee decree-holder could not bring the

Transfer of Property Act (IV. of

—(Continued).

mortgaged property to sale in execution of this decree, but, if he wished to do so, he would have to institute a suit under S. 67 on the decree.

Hem Ban v. Bihari Gir, A.W.N. (1905), 189 = 2 A.L.J. 479 = 28 A. 58.

KNOX, J.

Reference.—22 C. 859, F.

(103) S. 99, sale in execution in violation of, suit to set aside not maintainable—See CIV. PRO. ONE, No. 128, 3 A.L.J. 456 and No. 51, *supra*.

(104) S. 99—Attachment of mortgaged property—Sale in execution—Separate suit.

S. 99 of the Act forbids the sale of the mortgaged property, in execution of the decree, at the instance of the mortgagee: but it is no bar to an attachment of the property. **Kaji Inus Kaji Babu v. Kaji Inus Kajiba**, 8 Bom. L.R. 576.

SIR LAWRENCE JENKINS, C.J. & BEAMAN, J.

(105) S. 99, provisions of, not to be given retrospective effect—Purchase of equity of redemption by mortgagee at Court-sale—Old law.

Prior to the passing of the Transfer of Property Act, the purchaser of a mortgagor's right of redemption by the mortgagee at a Court-sale brought about by the latter in respect of a claim independent of the mortgage had the effect of vesting in the mortgagee-purchaser the whole of the right title and interest of the judgment-debtor, his mortgagor, in the property mortgaged. The restriction of the rights of, and the disabilities imposed on, the mortgagee purchasing "in execution of a decree for the satisfaction of any claim whether arising under the mortgage or not" by the provisions of S. 99 of the Act are applicable only in the case of proceedings governed thereby. The section cannot be given retrospective effect so as to affect such purchases by mortgagees in judicial sales perfected before Act came into force since the effect of applying it retrospectively will be to unsettle innumerable well-established titles acquired on the faith of the mortgagee's purchase in Court-sale being valid and competent to extinguish the mortgagor's equity of redemption. **Nanuvien v. Muthusamy Dikshadar**, 15 M.L.J. 445 = 29 M. 421.

SUBRAHMANIA AYYAR, OFFG., C.J. and SANKARAN NAIR, J.

Transfer of Property Act (IV of 1882).

—(Continued).

References :—22 M. 372 and 22 B. 624, *R. and Distd.*

See, also, I, 910-914.

(105-a) *S. 99*—*Mortgage by way of conditional sale—Money-decree on mortgage—Sale of equity of redemption—Purchase by mortgagee confers no title on him—Civ. Pro. Code, S. 244—Execution of decree—Sale—Suit for possession—Plea that sale was illegal—revision—Civil cases—Material irregularity—Regulation XVII of 1806, Ss. 7 & 8.*

The plaintiff, instead of proceeding to foreclose his mortgage by way of conditional sale under regulation XVII of 1806, brought to sale the equity of redemption of the mortgaged property, in execution of a decree for money obtained by him on the mortgage, and purchased it himself and obtained formal possession through the execution Court. Afterwards, he brought the present suit for possession of the property as owner. It was pleaded that the suit was bad, for the plaintiff should have proceeded under the Regulation XVII of 1806. The plea was accepted on appeal, and the suit was dismissed, among others, on the ground that the sale was held in contravention of the provisions of S. 99 of the Transfer of Property Act.

It was contended on revision that the order of dismissal of the suit was wrong, for (1) the plaintiff was not bound to foreclose the mortgage under the Regulation, and the Transfer of Property Act was not applicable to the case and (2) that the plea was barred by S. 244 of the Civ. Pro. Code.

Held, that the contentions had no force and there was no material irregularity for the exercise of revisional powers by the Chief Court. Though the Transfer of Property Act was not in force in the Punjab, the principle of S. 99 of the Act was of general application. **Jagan Nath v. Budhwa**, 157 P.L.R. 1906.

LAL CHAND, J.

References :—24 A. 549, 10 M.L.J. 110, 26 C. 777, 22 B. 624, 22 M. 372, *R.*

(106) *Ss. 99 and 67*—*Sale of a holding by a landlord having a mortgage thereon—Validity thereof—*

A landlord, who holds a mortgage over his tenant's holding cannot, in execution of a decree

Transfer of Property Act (IV of 1882).

—(Continued).

obtained by him against the tenant for rent bring the holding to sale. He cannot, under S. 99 of the Act, cause a sale of the holding except by means of a suit under S. 67 of that Act. A sale held otherwise would be void (a). **Basiruddi v. Kallas Kamini Devi**, 33 C. 113.

MACLEAN, C.J. and MITRA, J.

Reference.—(a) 26 C. 164, *F.*

(107) *Ss. 99, 67*—*Money-decree in favour of mortgagee, sale of mortgaged property in execution of—Sale void—Civ. Pro. Code, S. 244, applicability of—*

The decree-holder, who was a co-sharer land-lord having obtained a decree for rent, brought to sale the holding of the judgment-debtor and the appellant became the purchaser. The judgment-debtor applied to have the sale set aside on the ground that since the decree-holder had a subsisting mortgage of a portion of the holding, he was not entitled to bring it to sale except by a suit under S. 67 of the Transfer of Property Act and the application was opposed by the appellant. *Held*, that the sale was void as in contravention of the provisions of S. 99 of the Transfer of Property Act. The sale was on the whole undivided property which could not be split into parts though only a portion of it happened to be under mortgage and it would not make any difference that the appellant, a third party, and not the mortgagee himself (a) was the purchaser at the sale. *Held*, also, that such a sale could be set aside in execution-proceedings under S. 244 of the Civ. Pro. Code (b). **Sonu Singh v. Behari Singh**, 33 C. 283.

PRATT and BODILLY, JJ.

References.—(a) 26 C. 161 and 30 C. 463, *R.* (b) 22 M. 347, *F.*

Ss. 99, 132—*See I, 914, No. 77.*

(108) *S. 100*—*See No. 17, supra.*

(109) *S. 100*—*Charge—None in case of contingency—Covenant in sale-deed—Construction of deed.*

A sale-deed contained the following covenant :—"If, in the future, any person appear as a claimant of the property sold and make a claim, in consequence of which there is an injury to the property sold or we do not give possession. . . . then the purchaser may recover the money from our persons or sold property. . ." *Held*, that the covenant did not create a charge in favour of the purchaser. A

Transfer of Property Act (IV of 1908).

—(Continued).

document, which creates a charge within the meaning of S. 100 of the Act, must be a document which creates a charge at the time and not merely the possibility of a charge. **Harjas Rai v. Naurang**, 8 A. L. J. 220 = A.W.N. (1906), 82.

STANLEY, C.J. and BANERJI, J.

(110) *S. 100, charge, meaning of, in, and in S. 65 of the Bengal Tenancy Act—Equity, can it override Law? Difference between a mortgage and a charge.*

The charge referred to in S. 65 of the Bengal Tenancy Act is not such a charge as that defined by S. 100 of the Transfer of Property Act, and does not require to be enforced in the same manner; the only consequence, which follows from the provisions that rent is a first charge upon an under-tenure, is, that a sale, held in execution of a decree for arrears of rent, produces the effect described in Ch. XIV of the Bengal Tenancy Act.

A mortgage does, whereas a charge does not, involve a transfer of an interest in specific immovable property (a).

A mortgagee can follow the mortgaged property in the hands of a transferee from the mortgagor, whereas a charge can be enforced against a transferee, only if it is shown that he has taken with notice of the charge (b).

Where an instalment bond provided that the executant would be personally responsible for the payment of the money, and that, in case of default, it would be competent to the person, in whose favour it was executed, to institute a suit to obtain a decree and to recover the dues by attachment and sale of an under-tenure.

Held—That, upon the terms of the bond, it did not create a mortgage, but merely effected a charge.

The words "and the transaction does not amount to a mortgage," in S. 100 of the Transfer of Property Act, signify that, if the relation created by the instrument is not that of a mortgagor and mortgagee and immovable property has been made security for the payment of money, there is a charge on the property; they do not mean that, if the transaction on the face of it purports to be a mortgage, but the instrument is not operative as such, by reason of defective execution or non-compliance with the formalities prescribed by the law, the transaction is converted into a charge (c).

Transfer of Property Act (IV of 1908).

—(Continued).

Equity will not contravene the positive enactment or requirements of law and defeat its policy by supplying, under the guise of amending defective instruments, those deficient elements of form, without which the agreement is absolutely void, even as between the parties to it.

In the face of the statutory provision contained in S. 100 of the Transfer of Property Act, the Courts in India will not, and cannot, apply indiscriminately the general equitable principle of English rule, namely, that a mortgage, which is defective and is inoperative as such, operates as a good equitable lien, if it shows an intention to create a charge. **Reyzuddi Sheikh v. Kritarthanath Mukerjee**, 4 C.L.J. 219 = 38 C. 985.

RAMPINI and MOOKERJEE, JJ.

References.—(a) 25 M. 220 (237), (1889) 23 Q. B. D. 239 (242), *Il* and *F*. (b) 13 A. 28 (44), *R*. (c) 20 C. 78, 26 C. 246, 22 C. 729, 7 Bom. L. R. 984, *R*. and *F*. 10 M. 500 and 24 M. 337, *disapproved*.

See, also, I, 915, No. 78.

Ss. 105, 106—See I, 915, No. 79.

(111) *Ss. 105 and 107—Landlord and tenant—Arrears of rent—Kabuliat whether equivalent to lease—Lease, requirements of a valid—Unregistered Kabuliat for more than one year—Oral agreement to execute lease for seven years, admissibility of—Evidence Act, S. 91—Compensation for use and occupation of land.*

In a suit for arrears of rent, the plaintiff alleged that the defendant has been in possession and enjoyment of her share since 1307 *Fasli*, and had been paying rent, at the rate of Rs. 167, a year, to the plaintiff and that the sum claimed was due from him at that rate for the years in suit. The defendant denied that he had been in possession of the share. From the record it appeared that the plaintiff further stated that she agreed to give the defendant a lease of the land for seven years at the rate of Rs. 167, a year, and that the defendant executed an unregistered *kabuliat* to that effect but no lease was written or registered.

Held, that a *kabuliat* is not a lease or the equivalent of a lease, although, for the purposes of the Stamp Act, a lease includes a *kabuliat*, and that, having regard to the provi-

Transfer of Property Act (IV of 1882)
—(Continued).

sions of Ss. 106 and 107 of the Transfer of Property Act an agreement to execute a lease of immovable property, for any term exceeding one year, was inadmissible in evidence and that its terms could not be proved by oral evidence under S. 91 of the Evidence Act. *Held*, further, that the plaintiff was at liberty to prove that she gave, and the defendant accepted, a lease of the property in suit for one year at a certain rent and that the defendant obtained possession in accordance with the agreement. If this was proved and also that the defendant held over after the expiry of the first year, he was liable to pay rent, at the same rate, for the period he remained in possession. Even if this was not proved, plaintiff was entitled to a decree for the amount claimed as compensation for use and occupation of the land by the defendant (a). **Musammat Raj Kuar v. Nabl Bakhsh**, 9 O.C. 296.

SCOTT and RYVES, J. CS.

References:—(a) 5 O.C. 222, 7 O.C. 166, 9 M. 142 and 9 C. 908, R.

See, also, I, 915, No. 80.

(111-a) S. 106—*Presumption as to monthly tenancies—Notice to quit when to be given.*

In this country, the practice of letting on monthly tenancies is so widespread as to warrant the Legislature in raising a presumption in favour of monthly tenancies. When the tenant's entry takes place in the middle of a calendar month, and rent is payable from the date of entry, but the parties agree that the rent should be payable at the rent of the calendar month, the reasonable inference is that they intended that the monthly tenancy should coincide with the calendar month.

In such cases, the 15 days' notice to quit must be so given as to expire with the end of the calendar month (a), and not with reference to the date of the entry or the lease, unless the intention of the parties appears to be contrary.

Obiter:—Where the interest of the lessor determines altogether, and the title passes to the remainderman, and the lessee goes on holding under the remainderman, although in law a new tenancy is created, yet, in giving notice to quit, the commencement of the former tenancy must be looked to (b). **Arunachella Chettiar v. Ramiah Naidu**, 16 M.L.J. 533.

BENSON & WALLIS, JJ.

Transfer of Property Act (IV of 1882)
—(Continued).

References:—(a) 7 A. 899, R; (b) 9 C. 181, R. S. 106, 116—*See* I, 916, No. 81.

S. 107—*See* 1, 916, No. 82 and *Registration Act*, No. 2.

(111-b) S. 107—*See* No. 111, *supra*.

(112) S. 108—*Landlord and tenant—Liability for repairs—Construction of lease.*

The lease of a house contained a clause imposing upon the lessee the liability to keep the premises in a good and substantial repair. It contained no express covenant whereby the landlord bound himself to make any repairs or to keep the house fit for habitation. *Held*, that the lessor was not liable to make good damage caused to the demised premises by earthquake, hurricane, or the like.

The lessor in a letter to the lessee stated:—“When a house is rented on a repairing lease, the lessee is the person that any mishap to the building is at the risk of the lessee (*sic*) except damage done from an earthquake and the like.” *Held*, that this was no admission that the lessor of his liability to execute repairs made necessary by hurricane, earthquake, and the like: at most it might indicate that the parties understood that the repairing clause of the lease did not impose upon the tenant a liability to execute structural repairs rendered necessary by any extraordinary cause, such as an earthquake and the like. **Bolton v. Donald**, A.W.N. (1906), 56 = 3 A.L.J. 184.

KNOX and AIRMAN, JJ.

(113) Ss. 108, cl. (a) and 117.—The clause has no application to agricultural leases as laid down in S. 117 of the Act—*See* MINING RIGHTS, No. 1, 3 C.L.J. 59.

(114) S. 108 (c)—*See* No. 84, *supra*.

(115) Ss. 110 and 111, cl. (g)—*Forfeiture of tenancy—See* SERVICE TENURE, No. 1, 3 C.L.J. 274.

(116) S. 111, cl. (g)—*See* SERVICE TENURE, No. 1, 3 C.L.J. 274.

S. 114—*See* I, 917, No. 84.

S. 116—*See* I, *Landlord & Tenant*, No. 2.

(117) S. 117—*See* MINING RIGHTS, No. 1, 3 C.L.J. 59.

(118) S. 123—*See* ACT I OF 1869 (OUDH ESTATES), No. 2, 9 O.C. 113 and Nos. 4 and 12, *supra*.

See, also, I, 917, 4

Transfer of Property Act (IV of 1882). | Trust.—(Continued).

—(Concluded).

(119) *S. 135 (b), inapplicability of the section where the entire consideration is not the debt alone—*

The question in this case was whether, under S. 135 (b) of the Act (in its chapter VIII as it stood prior to its amendment by Act II of 1900; S. 4) the plaintiffs could recover, on account of a legacy assigned to them, only the amount actually paid, with interest. One part of the consideration for the transfer was a debt due by the transferor to the transferees but the other part was cash paid. *Held*, the case could not be brought within the exception in the said S. 135 (b) viz., "where it is made to a creditor in payment of what is due to him." Those words could only apply to cases where the entire consideration is the debt. To hold otherwise would, in effect, be varying the language materially and would make the clause run as if the words were "in payment wholly or in part of what is due to him." **Chinnam Rajamannar v. Tadikonda Ramachandra Rao**, 29 M. 155.

SUBRAHMANYA AYYAR and BODDAM, JJ.

Treaty.

See I, Act X of 1876 (Bombay), No. 1.

Trees.

(1) Right to—on ryots' holding under a Zemindar—See CIV. PRO. CODE, No. 812, 16 M.L. J8.

(2) Property in—on land let to tenant for planting a grove, is in the tenant—See LANDLORD and TENANT, No. 10, A.W.N. (1906), 204.

See, also, I, Act XVI of 1887 (Punjab), No. 6.

Trespasser.

The co-sharer's lessee is not a—See ACT II OF 1901 (N.W.P. TENANCY), No. 28, A.W.N. (1906), 222.

Trust.

(1) *Deed of—Construction—Distinct provisions for devolution of trusteeship and of beneficial interest—Clear language in one—Ambiguity in the other—Construction placed on earlier document—Use in interpreting later document—"Heirs," meaning of.*

In construing an instrument which provided that certain pension, was to devolve on the 'heirs' of the original pensioners, it was contended that the term 'heirs' must mean, 'heirs' who are also 'descendants,' because,

the terms 'heirs' and 'descendants' were used as convertible terms in describing the descent of certain trusteeship, including the trusteeship of the pension.

Held, that it could not be assumed that the donor intended the descent of the trusteeship and the descent of the beneficial interest to be governed by the same rules. The ambiguity of the language used on the one subject cannot control the clear and unambiguous words employed with regard to the other.

The construction placed on an earlier document could not be used in construing a later document executed by the same person, when the later document did not embody or refer to the earlier document, and when, further, they did not form parts of the same transaction and were not even contemporaneous. Nor could the decision on the earlier document afford a precedent for the interpretation of the later document when the language of the two documents was found to be entirely dissimilar (a). **Haider Husain Khan v. Faghfur Mirza**, 9 C.W.N. 817 = 2 C.L.J. 57 = 8 O.C. 270 = 27 A. 883 (P.C.) = 15 M.L.J. 327 = 7 Bom. L. R. 850 = 3 A.L.J. 64 = 32 I.A. 135.

LORD JAMES OF HEREFORD, LORD ROBERTSON, SIR ANDREW SCOBLE and SIR ARTHUR WILSON.

Reference.—(a) 16 I. A. 175, *Refl. to. and Distd.*

(2) *Trust property—Non-liability to pay debt incurred on behalf of trust—Income of the trust property—Liability of the manager of the trust.*

Plaintiff sued for the cost of fuel supplied to a choultry under the management of the defendant. The Lower Court passed a decree against the defendant personally and in the alternative, against trust property. The High Court modified the decree and declared that the trust property should not be made liable, as such, that the debt is to be paid out of its income and that, if not so recovered, the plaintiff can recover it personally from the defendant (manager). **Seetha Lakshmi Ammal v. Srinivasa Iyengar**, 16 M.L.J. 412.

MOORE, J.

(3) *Public—Necessity for sanction of Advocate-General—See CIV. PRO. CODE, No. 277, 10 C. W. N. 581.*

Trust.—(Concluded).

(4) Applicability of S. 599, Civ. Pro. Code, o—Suit by the whole body of persons authorised to administer the trust—See CIV. PRO. CODE, No. 292, A. W. N. (1906), 230.

See, also, I, 918-920; Act XXVII of 1866 (Trustees), No. 1; Hindu Law (Will), No. 5; Limitation Act, No. 101; Mahomedan Law (Gift), No. 1; Specific Relief Act, No. 29; and Will, No. 12.

Trust Act (II of 1882).

See ACT II OF 1882 (IMPERIAL).

See, also, I, 920 & 921.

Trustee.

Person unauthorisedly obtaining renewal of a promissory-note is—for the rightful owner thereof—See MISJOINDER OF PARTIES, No. 3, 29 M. 87.

See, also, I, 924; and Act II of 1882 (Trusts), No. 3 and Res Judicata, No. 30.

Trustee (Female).

See I, Limitation Act (XV of 1877), No. 103.

Trustees.

Grant of probate to, as executors according to tenor—See ACT V OF 1881 (PROBATE AND ADMINISTRATION), No. 1, 16 M.L.J. 558 IN THE SUPPLEMENT.

See I, Act II of 1882 (Trusts), No. 2, and Trust, No. 1.

Trustees (additional).

See I, Civil Pro. Code, No. 275.

Trustee and Custodius Trust.

Confidential relationship—See CONFLICT OF LAWS, No. 1, 8 Dom. L.R. 525.

Trusteeship.

See I, Limitation Act, No. 21.

Trust Property.

See I, 921-924; Court Fees Act, No. 15; and Limitation Act, No. 21.

Unclaimed Deposits Act.

See ACT XXV OF 1866.

Under-proprietary Right.

Claim for—on ground of being old proprietors without evidence of specific grant of the right—See ACT XXVI OF 1866 (ORDN), No. 1, 9 O.C. 167 (B).

See, also, I, Cause of Action, No. 8.

Undue influence.

Whether evidence of—not mentioned in the

Undue influence.—(Concluded).

pleadings can be admitted—See BENAMI TRANSACTIONS, No. 8, 10 C.W.N. 570 (P.C.)

See, also, I, Contract Act, No. 4.

Universal legatees.

See, I, Act V of 1881 (Probate), No. 1.

Upper Burma Civil Courts Regulation.

(1) S. 10, Sub-divisional Court having jurisdiction under, entertaining a suit of the Township Court, whether a mere irregularity.

Where the suit in question ought to have been brought in the Township Court but happened to be entertained by the Subdivisional Court, in contravention of S. 15 of the Code of Civil Procedure, it was, held, that this was a mere irregularity, which did not vitiate the proceedings, since the Sub-divisional Court had jurisdiction under S. 10 of the Regulation. *Nga Sa Gyi v. Nga Ye Ban*, U.B.R. (1905) Civil Procedure, 36.

SHAW, J.C.

Upper Burma Land and Revenue Regulation.

(1) S. 53 (2) (ii), Suit to recover a twinyo or ayo, whether cognisable by a Civil Court.

The subject-matter of this suit was a *twinyo* or *ayo*, which was an interest in immovable property forming State-land. Held, therefore, that, under S. 53 (2) of the Upper Burma Land and Revenue Regulation, a suit to recover such a *twinyo* or *ayo* was not within the cognizance of the Civil Courts. *Ma Min Dwe v. Ma Ma Kin Kintyin Mibaya*, U.B.R. (1906) Land and Revenue Regulation 1.

SHAW, J.C.

References:—U.B.R. (1892-96). II. 327, U. B.R. (97-01). II. 443, U.B.R. (97-01). II. 207, 209, 211. R.

Urban areas.

See I, Act VIII of 1885 (Bengal), No. 4.

Valuable consideration.

See I, Mahomedan Law (Gift), No. 4.

Valuation of appeal.

(1) Further appeal to Chief Court of the Punjab—valuation for purposes of jurisdiction.—Punjab Courts Act, 1884, S. 40 (1), (b)
—Suit for possession of land after foreclosure of mortgage.

This was a suit for possession of land assessed to land revenue, on the allegation of an already completed foreclosure. The question for decision was whether having regard to S. 40 (1) (b), of the Punjab Court's Act, 1884, the value

Valuation of appeal.—(Concluded).

of the property was such as to give a party a right of further appeal to the Chief Court. *Held*, 30 times *Jama* assessed on the land being less than Rs. 1000, a further appeal was prohibited by S. 40 (1) (b), of the Act. The contention that the property involved in the foreclosure decree was worth more than Rs. 1,000, and, that, consequently a further appeal was permissible, was rejected as untenable. **Yelr Singh v. Sirmukh Singh**, 84 P. R. 1906.

JOHNSTONE and RATTIGAN, JJ.

Reference.—24 P. R. 1906, R.

(2) See under CIVIL PROCEDURE CODE, No. 325, 3 C.L.J. 257.

(3) Suit for partition—Appeal to Privy Council, valuation for purposes of—See CIV. PRO CODE, No. 325, 10 C.W.N. 564.

(4) Appeal against decree in suit under S. 390, Civ. Pro. Code—Stamp-duty payable—See COURT FEES ACT, No. 1, 29 M. 172.

(5) Appeal by mortgagor or mortgagee in a suit for redemption—value of subject-matter of appeal—See COURT FEES ACT, No. 9, 16 M.L. J. 287.

See, also, I, Court Fees Act, No. 7.

Valuation of land.

See I, Act I of 1894, No. 6.

Valuation of suit.

(1) Jurisdictional value of suit to establish right to attached property.

Where the amount of the decree, in execution of which property is attached, is less than the actual or alleged value of the property, the jurisdictional value of a suit to establish a right to the attached property, must be held to be the value of the decree (a).

The amount of the decree, in such cases, is really all that has to be regarded, for the decree can be satisfied and the attachment removed, on payment of the amount decreed, and it is to secure the decretal amount, and nothing else, that the decree holder is presumed to be executing his decree. It is quite immaterial, that, in a subsequent paragraph of the plaint, the property attached is alleged to be worth considerably more than the value of the decree. **Zorawar Singh v. Dewa**, 142 P.R. 1906.

RATTIGAN, J.

Reference :—(a) 55 P.R. 1906, F.

(2) "Amount or value of the subject-matter of the suit" in S. 596, C. P. Code—Appeal to

Valuation of suit.—(Concluded).

Privy Council—Suit for partition—Whether the value of the whole estate or of the share claimed test of valuation—See CIV. PRO. CODE, No. 325, 3 C.L.J. 257.

(3) Suit for partition—Basis of valuation—Value of property—Appeal to which Court to lie—See ACT XII OF 1887 (BENGAL), No. 4, 3 C.L.J. 197.

(4) Original valuation over Rs., 5,000—Subsequent withdrawal of part of the claim, effect of, on appeal to High Court—See ACT XII OF 1887 (BENGAL), No. 3, 3 A.L.J. 136.

(5)—for pre-emption of land not paying Government revenue—See COURT-FEES ACT, No. 4, A.W.N. (1906), 66.

(6) Arbitrary—by plaintiff in suit for settlement of accounts—Proper value for jurisdictional purposes—See COURTS FEES ACT (VII OF 1870), No. 6, 46 P.R. 1906.

(7) Suit for damages for more than Rs. 10,000 dismissed on appeal—Damages not assessed by first Court—Value of subject-matter for purposes of appeal to Privy Council—See PRACTICE (PRIVY COUNCIL), No. 3, 33 C. 893.

(8) Suit for partition—See ACT VII OF 1887 (SUITS VALUATION), No. 5, 4 C.L.J. 509.

See, also, I, 923-924; and Appeal (Privy Council), No. 4; Civil. Pro. Code, No. 315; Court Fees Act, Nos. 2 and 3 and Custom (Punjab), No. 7.

Vendee.

Re-sale by, to vendor, whether could affect a pre-emption decree—See PRE-EMPTION, No. 42, 2 N.L.R. 150.

Vendor.

Estoppel of, when affords title to purchaser under S. 41 of the Transfer of Property Act—See ESTOPPEL (TRAVANCORE), No. 1, 21 F.L. R. 236.

Vendor and Purchaser.

(1) Default by vendee to pay purchase-money to vendor's creditor as agreed—Cause of action for vendor to sue vendee—Right of vendor to the purchase-money—Limitation.

On a sale of lands by plaintiff to defendant, the latter undertook to pay the purchase-money to a creditor of the plaintiff. Defendant having failed to pay, accordingly, the said plaintiff's

Vendor and Purchaser:—(Continued).

creditor sued the plaintiff and certain purchasers of his hypotheca from plaintiff and realised from such purchaser the amount due by plaintiff. Plaintiff, thereon, alleged an undertaking by her to repay the purchasers the amount they had to pay to her creditor and instituted the present suit to recover that amount as damages from the defendant. *Held*, plaintiff's suit, as for damages, was not maintainable and her cause of action would arise only on payment of any money by her, but the defendant, having failed to comply with the terms of sale, was bound to pay up the purchase-money directly to plaintiff, her vendee, and limitation for a suit by the latter begins to run only from when the performance by the defendant of his agreement to pay the plaintiff, vendor's creditors, becomes no longer possible. **Tangammal Nachiar v. Subbammal**, 16 M.L.J. 20.

MOORE and SANKARAN NAIR, JJ.

(2) *Counterpart by vendee subsequent to sale, effect of—Personal covenant of vendee with one of the vendors, whether assignable.*

1st defendant, who purchased certain property from defendants Nos. 2 to 4, subsequently, executed to the 2nd defendant alone a certain counterpart deed undertaking thereby to re-sell the property to that defendant on his repaying the purchase-money. The 2nd defendant assigned his rights under the counterpart, to the plaintiff, who instituted the present suit to recover the land on paying off to the 1st defendant the amount due to him. *Held*, that the sale-deed to, and the counterpart by, the 1st defendant could not be construed as constituting a mortgage so as to entitle the plaintiff to redeem the property and further that the above counterpart created a contract, personally with the second defendant alone, which was not assignable and that its assignment, therefore, could confer no rights on the plaintiff as against the defendant. **Uthandi Mudali v. Raghavachari**, 16 M.L.J. 106 = 29 M. 307.

BODDAM and MOORE, JJ.

(3) *Suit by vendee for possession—Burden of proof—See LIMITATION ACT, No. 108, A.W.N. (1906), 95.*

(4) *Vendee put in possession but not provided with a registered sale-deed—Sale for more than Rs. 100—Suit by vendor in ejectment—Right of vendee to put forward equitable plea—Ven-*

Vendor and Purchaser:—(Concluded).

dee's right to sue for specific performance not barred—See TRANSFER OF PROPERTY ACT, No. 31, 1 M.L.T. 153.

(5) *Vendor's charge upon immovable property for unpaid balance of price, suit to enforce—Charge for unpaid purchase money—See LIMITATION ACT, No. 69, 9 O.C. 284.*

See, also, I, 924-925; Transfer of Property Act, No. 66.

Vendor and Vendee.

Admission of receipt of price by, effect of, on amount due to vendee by pre-emptor—See PRE-EMPTION, No. 44, 9 O.C. 308.

Verification.

See I, Civil Pro. Code, No. 243.

Vice-Chairman of Municipality.

See I, 929.

Vicinage.

See I, Pre-emption, No. 1.

Village.

Meaning of the word—in the Punjab Laws Act—See PRE-EMPTION, No. 20, 23 P.R. 1906.

Village Abadi.

See I, 926.

Village Chowkidar's Act (VI of 1870, (B.C.).

See I, 926.

Village officers.

See I, Act III of 1895 (Malras), No. 1.

Voluntary payments.

See I, Small Cause Courts Act, Provincial, No. 7.

Vyavahar Mayukh.

See I, Khoja Mahomedans, No. 1.

Wagering Contract.

See I, 927-928; and Contract Act, Nos. 13 & 14.

Waiver.

(1)—*Accepting of irregular Payments—No right to enforce covenant—mortgage-deed.*

Where a mortgagee accepts irregular payments as payments made in satisfaction of a covenant in a mortgage-deed, which provided for payment by certain instalments, he must be taken to have waived his right to enforce the penalty provided for the breach of the covenant which he had an option to enforce under the deed. **Sakhwat Hussain v. Gajal-**

Waiver.—(Concluded).

dhar Parahad, 3 A. L. J. 469 = 28 A. 622. o

STANLEY, C.J., and KNOX, J.

Reference.—5 A. 289, F.

(2) *Per RAMPINI, J.*—The question of acquiescence or waiver is a question of fact and the finding of the lower Appellate Court on such a question is final and cannot be interfered with in second appeal.

Per MOOKERJEE, J.—Acquiescence is not a question of fact, but of legal inference from facts found, and it is open to the appellant in a second appeal to invite the High Court to consider whether the question of acquiescence has been properly decided by the lower Courts (a). **Ananda Chandra Sen v. Parbati Nath Sen**, 4 C.L.J. 198.

RAMPINI and MOOKERJEE, JJ.

Reference.—(a) 21 A. 596 (P.C.), F.

(3)—of right to cancel arrangement for payment by instalments—See MORTGAGE (CONSTRUCTION), No. 3, A.W.N. (1906), 139.

See, also, I, Civil Pro. Code, No. 298; Pre-emption, No. 10; and Transfer of Property Act, No. 30.

Wajib-ul-ars.

(1)—*Interpretation—Pre-emptors claiming as sons of vendors—No preference—lic-sais to a co-sharer before suit.*

The *wajib-ul-ars* of a *pattidari* village provided as follows: "The *pattidars* of all the three parties in this village are own brothers and relations. Hence, should any sharer of any *patti* be willing to sell his share, he shall, in the first instance, offer it to the co-sharers of the *patti*, and, in case of their refusal, to any person." The plaintiffs sued for pre-emption, claiming preference on the ground that they were the sons of the vendor.

Held that the mere fact that it is stated in the preamble of the *Wajib-ul-ars* that the *pattidars* of all the three parties in this village are own brothers and relations, cannot give preference to the plaintiffs.

If property which is subject to pre-emption, having been sold to a stranger, is subsequently re-sold by the stranger-vendee, before suit, to a co-sharer having equal rights with those seeking pre-emption no suit for pre-emption will lie (a). **Masir Ali Khan v. Nathu Bibi**, 3 A.L.J. 544 = A.W.N. (1906), 215.

STANLEY, C.J. and KNOX, J.

Wajib-ul-ars.—(Continued).

Reference.—(a) 20 A. 100, R.

(2) Construction of—"Kimat"—"Muntakil Kare"—See PRE-EMPTION, No. 3, 3 A.L.J. 215.

(3)—giving a right of pre-emption to a *kari bi ekjandi hisador*—Whether a co-sharer is such *hisador*—See PRE-EMPTION, No. 4, 3 A.L.J. 170.

(4) Record of custom in—See PRE-EMPTION, No. 2, 3 A.L.J. 207.

(5) A verified entry by a person in a—cannot be regarded as will binding his estate after his death—See HINDU LAW (WILL), No. 1, 10 C.W. N. 249.

(6) Pre-emption—Power given by—to appoint arbitrator to settle price—*Wajib-ul-ars* unenforceable—See PRE-EMPTION, No. 22, 3 A.L.J. 479.

(7) When the language of a—is obscure, it affords no basis for a right of pre-emption—See PRE-EMPTION, No. 13, 3 A.L.J. 307.

(8) Entries in—, admissibility of, in evidence—Evidence Act, S 85—See HINDU LAW (ADOPTION), No. 8, 3 A.L.J. 415.

(9)—recording custom in favour of *ek jaidies* only—See CUSTOM (PECULIAR TO PUNJAN), No. 51, 92 P.L.R. 1906.

(10) Construction of—See PRE-EMPTION, No. 37, 28 A. 286.

(11) Clause in—incapable of enforcement—See PRE-EMPTION, No. 34, A.W.N. (1906), 218.

(12)—recording custom of pre-emption—previous one giving no such right—the latest silent—Custom fallen into desuetude—See PRE-EMPTION, No. 33, 3 A.L.J. 646.

(13) Construction of—Members of a Hindu family other than the recorded member, co-sharers for purposes of pre-emption—See PRE-EMPTION, No. 32, 3 A.L.J. 641.

(14) "Rights amongst co-sharers based on custom or contract"—Construction of document, See PRE-EMPTION, No. 41, A.W.N. (1906), 208.

(15) Rights of samindars in respect of house-sites and grove-lands—See LANDLORD and TENANT, No. 16, A.W.N. (1906), 307.

(16) Construction of,—Contract or custom—See PRE-EMPTION, No. 40, 3 A.L.J. 850.

(17) Resumption of land re-appearing from river bed—See LIMITATION ACT, No. 3, 158 P. L. R. 1906, IN THE SUPPLEMENT.

Wajib-al-ars.—(Concluded).

(18)—silent as to nature of custom—No allegation as to nature of custom in plaint—Applicability of Mahomedan Law—See *Pak-emption*, No. 5, 2 A.L.J. 482 = A.W.N. (1905), 190.

(19) Construction—Co-sharers in the village—See *Pak-emption*, No. 9, 2 A.L.J. 538.

See, also, *I, Custom*, No. 6; *Custom (Punjab)*, No. 6; *Landlord and Tenant*, No. 40; and *Pre-emption*, Nos. 5, 10, 17, 18, 19, 20, 43 and 49.

Wajib-al-ars (Nagpur).

See *I*, 299.

Wakf.

—tying up property for family aggrandisement under the garb of, repugnant to Mahomedan Law—See *MAHOMEDAN LAW (WAKF)*, No. 8, 4 C.L.J. 442.

See, also, *I, Civil Pro. Code*, No. 274.

Wakfnamah.

Suit for setting aside a substantial dedication—Evidence to show that there was no intention to give effect to the trusts, irrelevancy of—See *MAHOMEDAN LAW (WAKF)*, No. 1, 10 C.W.N. 440.

Waste land.

Presumption as to possession of—See *RES JUDICATA*, No. 8, 9 O.C. 32.

Water.

Right of lower riparian proprietor to the unimpeded flow of—See *RIPARIAN RIGHTS*, No. 1, 8 Bom. L.R. 87.

See, also, *I, Easement*, No. 5.

Water-course.

Illegal obstruction of, right to injunction on—See *INJUNCTION*, No. 3, 4 C.L.J. 870.

See, also, *I, Injunction*, No. 2.

Wells.

Construction of—by mortgagee—Liability of mortgagor to pay cost of such construction when mortgagee has purchased a portion of the equity of redemption—See *MORTGAGE (REDEMPTION)*, No. 10, 3 A.L.J. 435.

Widow.

Power of adoption conferred on, when becomes incapable of execution—See *HINDU LAW (ADOPTION)*, No. 9, 4 C. L. J. 857.

Widow Remarriage Act.

See *ACT XV OF 1856*.

Will.**(1)—Construction of will—"Such"**

One of the clauses of a will ran:—"as regards the remaining one equal fourth share of the said residue, I direct that if, at the time the said residue is divisible, my son Ardeshir shall have no debts due by him or any liabilities likely to result in a debt or debts of more than Rs. 5,000, the said share be made over to him absolutely: but, if otherwise, then I direct that the said share shall be held or settled by my executors upon trust until the said Ardeshir shall be free from such debts and liabilities or he shall die, to apply the income of the same in or towards the maintenance and support of him, his wife and children or such or one or more of them, the said Ardeshir, his wife and children, as the trustees may, at their absolute discretion, determine and the education and other benefits of such children including their marriage; but, when and so soon as he, the said Ardeshir, shall be free from such debts and liabilities as aforesaid, upon trust to pay the same and all unapplied income, if any, to him the said Ardeshir absolutely." On a construction of this clause:

Held, that the debts and liabilities of Ardeshir contemplated by the above clause are "debts due by him or any liabilities likely to result in a debt or debts of more than Rs. 5,000"; and it is with debts of that description that a comparison is implied by the use of the word 'such.' Time is no part of their description; it is extraneous to it and the reference to time is made only to indicate the event, on which certain consequences are to follow according as debts and liabilities of the description indicated do or do not exist. *Bai Jalji v. N. C. Macleod*, 8 Bom. L.R. 122 = 30 B. 498.

SIR LAWRENCE JENKINS, C.J. and BATTY, J.

(2) *Will—Execution—Solicitor—Executor preparing and attesting will—Clause permitting him to charge for professional and other services—Proof—Onus—Independent advice—Fiduciary relation—Deed referred to in will—Probate—Succession Act (X of 1865), S. 51.*

If a party writes or prepares a will, under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court and call upon it to be vigilant and zealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed.

Will.—(Continued)

ed and it is judicially satisfied that the paper propounded does express the true will of the deceased (a).

But there is no rule of law as to the particular kind or description of evidence by which the Court must be satisfied. The degree of suspicion excited and the weight of the burden of removing it must depend largely on the nature and amount of the benefit taken and all the circumstances of the case. The question is a pure question of fact and one to be decided on a consideration of the whole of the evidence and the circumstances of the case.

A clause in the will in this case permitted the solicitor, who prepared and attested the will, and was also appointed one of the executors, to charge for professional services done by him or his firm. It also allowed him a further remuneration of one *per cent* on the profits of the testator's business, for services in connection with the management of the business. The Judicial Committee was satisfied that there were circumstances, which showed that the testator understood and approved of the clause, although it appeared that the testator had no independent advice in this matter and no independent evidence was adduced that this clause in particular was called to the testator's attention.

Where a deed-poll previously executed by the testator was referred to in the will but not for the purpose of making its contents a part of the will:

Held, that it was not a testamentary document requiring probate, although the will, in terms, purported to confirm the deed. **Bai Gungabai v. Bhugwandas Yalji**, 9 C.W.N. 769 (P.C.) = 7 Bom. L.R. 854 = 29 H. 580 = 15 M. L.J. 271 = 3 A.L.J. 68 = 32 J.A. 142.

LOED DAVEY, LORD ROBERTSON and SIR ARTHUR WILSON.

References.—(a) 2 Moores' P.C. 480 and L.R. 7 E. and 1. App. 448, *Appr.*

(3) Disposition, nature of—Revocability.

The irrevocability of a document is perfectly inconsistent with its being a will. The document could not operate as a family arrangement if it was revocable. The fact that the document was registered as a non-testamentary one and was stamped, shows that the parties did not regard it as a will. **Sita Koor v. Deo Nath Mahay**, 3 C.L.J. 370.

Will.—(Continued).

MACLEAN, C.J. and MITRA, J.

(4) Construction of—Meaning of the term 'labham' used in a will—Demonstrative legacies, right of, to resort to general assets.

A question arose in this case, whether the Plaintiffs were entitled to be paid out of the general assets of the testator on failure of the source from which they had been directed to be paid by the testator: *Held*, though in the case of demonstrative legacies, the legatee is ordinarily entitled to resort to the general assets on failure of the source intended, the rule is subject to any directions to the contrary by the testator.

Another contention in the case on behalf of the defendant, was that the interest on the capital, the dividends on the shares and the income of the immovable property of the testator should be excluded from the profits out of which the legacies were to be paid to the plaintiff and it was *held* that the contention was clearly opposed to the ordinary meaning of the vernacular term '*labham*' used by the testator. Judging from the use of the said word '*labham*,' a very generic expression covering different kinds of profits and gains, and from the context in view of other directions in the Will, it must be taken to have been the intention of the testator to use the term in its comprehensive sense of profit, gain or income as opposed to the corpus yielding the same. **Chinnam Rajamannar v. Tadi-konda Ramachandra Rao**, 20 M. 155.

SUBRAHMANIA AYYAR and BODDAM, JJ.

(5) Suit for administration, obtaining probate of will constitutes part of the cause of action in a—Court granting probate, competency of, to determine the validity of the will—executor estopped from impeaching will.

The taking out of probate from the High Court, undertaking thereby, to administer an estate, constitutes a material part of the cause of action for a suit for administration. It has often been held that an executor sued in that capacity is subject to the jurisdiction of the Court granting the probate.

The contention that the inclusion of the immovable property of the testator situate in foreign territories, in the present suit for administration, would be to pronounce on the title to it, involving, as such inclusion would, the over-ruling of the defendants' objection as

Will.—(Continued).

to the incapacity of the testator to will away that portion of the property was held untenable for the reason, that, where the Court has jurisdiction to make a grant of probate, it has also the power to decide whether and how far the will is a valid testamentary disposition and in such cases, the Court has the same power with regard to any equities between persons within its jurisdiction respecting lands or assets in a foreign country as it has in the case of lands or assets locally situate.

Held, further, that inasmuch as the defendant in the present case having, with full knowledge of circumstances bearing on his rights as the testator's son, accepted the office of executor, obtained probate and under its authority collected assets and otherwise so acted as to cause the plaintiffs to alter their position, the defendant was estopped from impeaching the will, repudiating his fiduciary position or setting up in respect of the property dealt with by the will any rights inconsistent with the dispositions and conditions therein. **Srinivasamborthy v. Venkata Varada Iyengar**, 1 M.L.T. 7—16 M.L.J. 238—29 M. 239.

WHITE, C.J., and SUBRAHMANYA AYYAR, J.

(6) Construction—(Gift over).

Under a will, the residue after the payment of certain legacies, was divided into three shares, with respect to one of which, trusts were declared in favour of the wife (plaintiff) and children of the testator's son, HUSSEINBHAI. The testator directed a trust deed to be made in respect of this share. He also directed that, out of the share, a sum of Rs. 60,000 should be specifically dealt with as therein mentioned, and provided that "out of the said income (a sum) to the extent of Rs. 300, namely three hundred shall be paid every month to HUSSEINBHAI's wife for (her) household expenses and for the education of (her) children."

The will further provided: "If HUSSEINALLY should not have any son or, after having a son, should he die without leaving any son, then... I give the whole of the remaining property to my son, MAHOMEDBHAI, and his younger brothers and in the same manner after the decease of HUSSEINALLY and his wife I give the said sum of Rs. 60,000 also to him and them."

HUSSEINBHAI had no son at the date of the testator's death. He died leaving him surviving, his wife (the plaintiff), a daughter and a

Will.—(Continued).

son. The son died an infant a few months after HUSSEINBHAI's death.

Under these circumstances, the plaintiff claimed that she was entitled to a one-third share of Rs. 60,000 and to Rs. 300 a month during her life.

Held, (1) that the plaintiff, as the heir of her son on whom HUSSEINBHAI's interest devolved, was entitled to the one-third claimed by her in the balance of Rs. 63,000.

(2) that from the time when the above mentioned one-third was handed over to her, there should be a proportional abatement in the amount of Rs. 300 which was payable to her every month during her life. **Mahomedbhai Nensay v. Fatmabai**, 8 Bom. L.R. 615.

JENKINS, C.J. and BEAMAN, J.

(7)—speaks from the date of death—Hindu wills, loss of the original—admission of testator—Presumption as to destruction and revocation of wills in India and under English law.

A will must be construed as speaking and taking effect with reference to the state of things in existence immediately before the testator's death. This principle applies to Hindu wills also.

Where the original will is not to be found, there is a presumption in English law that it has been destroyed. But the presumption is not so strong in India, as in other countries, where wills are taken greater care of.

Where there was no evidence of the destruction of the will by the testator, but the plaintiffs relied on the non-production of the will and the deposition of certain witnesses, who said that the testator had admitted having destroyed the will, *held* that these facts were not sufficient to establish the presumption of revocation. **Shib Sabitri Prasad v. The Collector of Meerut**, 3 A.L.J. 747 = A.W.N. (1906), 295.

KNOX and AIKMAN, JJ.

(8) Income given for life, but property liable to be devised by will by the donee—Effect of the power.

Where a testator gives, by his will, income of certain property, to a certain person for life with a power to give the property by a will to whomsoever that person pleased, such person takes a life interest in the income of the pro-

Will.—(Concluded).

party and any one, who takes, under the latter's will, takes the property from the first testator. The only requisite condition, for a legal and valid exercise of the power to give property by will, is that the donee, taking under the will executed in exercise of the power, should be a person who was in existence actually or in contemplation of law, at the time of the first testator's death. *Raghavji Vissal v. Narandas Parmanandas*, 8 Bom. L.R. 921.

CHANDAVARKAR, J.

Reference:—21 B. 709, F.

(9) Powers of alienation of executor restricted by—See ACT V OF 1881 (PROBATE), No. 14, 3 C. L.J. 260.

(10) Capacity of a minor to make a—See MINOR, No. 1, 16 M.L.J. 185.

(11)—by a *Bedi Khatri* in favour of a son born of a union between the testator and a Brahmini whom he married—Validity of such will—See CUSTOM, No. 4, 77 P.L.R. 1906.

(12) Effect of—registration of a—properly obtained—See REGISTRATION, No. 2, 33 C. 537=3 C.L.J. 340=10 C.W.N. 522.

(18) Application by legatee for letters of administration—Letters of administration limited to that legacy alone granted with a copy of the will annexed—Suit by another legatee in respect of his legacy—Right of suit—See ACT X OF 1905 (SUCCESSION), No. 14, 10 C.W.N. 864.

See, also, I, 930-935; Administration, No. 2; Hindu Law (Adoption), No. 7; Hindu Law (Will), No. 2; Mahomedan Law (Will), No. 2.

Withdrawal of suit.

See I, Civil Pro. Code, Nos. 26, 230 and 232.

Witness.

(1) Right of person summoned as—under S. 86 of the Indian Insolvency Act to appear by

Witness.—(Concluded).

Counsel to show that the summons is prejudicial to his interests—See INSOLVENCY, No. 1, 8 Bom. L.R. 85.

(2)—refreshing memory by document, effect of—See TRADE-MARK, No. 2, 4 C.L.J. 268.

See, also, I, Appeal (Second), No. 3; Civil Pro. Code, No. 235; and Slander, No. 1.

Words.

See, I, Civil Pro. Code, Nos. 223 and 227; and Pre-emption, No. 5.

Written Statement.

Claim for set-off in a payment of Court fees for—See CIV. PRO. CODE, No. 85, 10 C.W.N. 199.

Yearly Tenancy.

See I, Landlord and Tenant, No. 19.

Zanzibar Orders in Council, 1894 and 1897.

See PROBATE, No. 1, 8 Bom.L.R. 725.

Zemindar and ryot.

Right to trees on ryots' holdings under Zemindar—See CIV. PRO. CODE, No. 312, 16 M.L.J. 8.

Zemindari tenant.

Presumption that, has occupancy rights—Rebuttal—See LANDLORD and TENANT, No. 22, 16 M.L.J. 557.

Zerai or Kamat lands.

See I, Act VIII of 1885 (Bengal), No. 33.

Zurpeshgidar.

See, I, Rent, No. 6.

Zurpeshgi lease.

A riyat taking—construed as cultivating lease—Occupancy, right of, whether can arise—See Act VIII OF 1885 (BENGAL TENANCY), No. 15, 10 C.W.N. 351.

See, also, I, Mortgage (Redemption), No. 20.

SUPPLEMENT.

Act X of 1885 (Succession).

(1) S. 56—Doctrine of implied revocation—Applicability to Hindu wills—See **HINDU LAW (WILLS)**, No. 8-a, 16 M. L. J. 491, IN THE BODY OF THE BOOK.

Act XVIII of 1879 (Legal Practitioners).

(1) *S. 18—Subordinate Courts—Jurisdiction of—enquiry into offences referred to in S. 13.*

A pleader was found guilty of tempting and inducing two subordinates of the Collector's Office, to act contrary to their duty, in allowing him to examine the treasury accounts. The Collector directed a Deputy Collector to charge him and to try the charge. *Held* that the Deputy Collector was competent to adjudicate upon the charge. A Court subordinate to the High Court is competent to try offences falling under clauses (c to f) of S. 13 of the Act. *In the matter of Muhammad Abdul Hal, Pleader*, 3 A.L.J. 811 = A.W.N. (1906), 268.

KNOX, J.

References:—15 C. 152 & 26 M. 448, *I.* 27 C. 1023, *Diss.*

Act V of 1881 (Probate and Administration).

(1) *S. 3—Grant of probate to trustees as executors according to tenor.*

The mere circumstance that the property is left by the will to trustees, without words referring to them as executors, would not prevent those persons being granted probate as executors according to the tenor, if, among the duties to be discharged by them under the will, there are included such duties as executors have to perform; but that should appear from the will. *N. Appasetty Mudali v. Muthukumarappa Mudali*, 16 M.L.J. 558.

WHITE, G.J., and SUBRAMANIA, AIYAR, J.

References.—17 L.R. Ir. p. 277, L.R. 3 P. & D. 157 & 2 P. & D. 369, *R.*

Act VI of 1882 (Companies).

(1) *Ss. 169, 177, 185, 189, 201, 202—Appeals from Court's orders regarding winding up of a company—Position of liquidators—Delegation of powers by liquidators, validity of.*

An appeal lies from any order or decision made by the Court, in the matter of the winding up of a company, whether the winding up be compulsory, voluntary or under supervision. The language of the first part of S. 169 is taken from S. 124 of the Companies Act of 1862, substituting the words "by the Court" for "by any Court having jurisdiction under this Act". The right of appeal conferred by S. 124 extends to all decisions in the matter of the winding up of a Company, and the substitution of the words "by the Court" does not restrict the right of appeal to cases, in which a company is being wound up compulsorily by the Court.

The original liquidators duly appointed under S. 177 (b) cannot delegate their duties to arbitrators or anyone else. Once appointed, they could not be removed by the company, but only by the Court under S. 185, on due cause shown. In the discharge of their duties, they are not subject to the control of the Company, except in so far as the sanction of an extraordinary resolution of the Company is required in the case of arrangements with the creditors or debtors of the Company made by the liquidators under the supervision of the Court in a voluntary winding up under Ss. 201 & 202.

The proceedings of the arbitrators, directors and the company, contrary to the above rules, are *ultra vires* and illegal.

If new liquidators are validly appointed by the Court under S. 185, they are bound to take up the winding up, at the point where the old liquidators had left off, ignoring all that the

Act VI of 1892 (Companies).—(Concluded).

arbitrators had done *ultra vires*, and not to call a meeting of the company to consider what further steps should be taken in the matter of winding up; because, the general meeting of the company has no legal competency to give directions to the liquidators. **Kesavaloo Naidu v. Murugappa Mudali**, 16 M.L.J. 537.

BENSON & WALLIN, JJ.

Act VII of 1889 (Succession Certificate).

(1) *Woman's property—Right of husband's brother and sister's son to certificate—Presumption as to marriage in Hindu Law.*

The husband's brother of a deceased woman has a better right to the succession certificate for her assets, than the sister's son. If the property in question was her husband's property, it passes to the husband's heirs. If it was her *stridhanam*, and if she left no issue, it passes to the husband's heirs, if the marriage was in one of the approved forms (u). In the absence of evidence to the contrary, there is a presumption that a marriage was in one of the approved forms. **Muthan Chetty v. Ramaswamy Chetty**, 16 M.L.J. 550.

WHITE, C.J., and BENSON, J.

References :—(a) 19 M. 35, 11 M.L.A. 139 175), R.

Act I of 1894 (Land Acquisition).

(1) *Ss. 3 (a), 6, 17, 18, 23—Acquisition of land with trees on—Compensation.*

In awarding compensation for land with trees on, a separate assessment of the compensation for the land and for the trees, respectively, is not necessary. The value of the trees is properly a part of the market value of the land. The word "land" in S. 3 (a) includes "things attached to the earth" and therefore trees, and this definition has to be applied to S. 23, unless there is something repugnant in the context.

S. 23, sub-s. 1, cl. (2) refers to damage sustained by reason of taking the standing crops or trees, which may be on the land at the time of its being taken possession, and cannot, without a misuse of language, be applied to a case of purchase of land with trees upon it. In such a case, if the price is fair, no damage is sustained by each party. The clause may be applied to the case provided for in S. 17, when the Collector takes possession before award, and the owner of the land declines to accept the sum then offered as payment for

Act I of 1894 (Land Acquisition).—(Concluded).

the crops or trees taken, or it may also be applied to the case of crops or trees grown after the date of the declaration under S. 6, the date with reference to which the market value has to be estimated.

To read S. 23 (1), cl. (1) as referring to the bare land without trees, involves the difficulty that there is no provision in the Act for the separate assessment of compensation for buildings, apart from the land on which they stand. As it is impossible to hold that they are liable to be acquired without payment of compensation, the word "land" in S. 23 must be taken to include "buildings standing thereon." If so "trees" must also be included in the word "land", as buildings as well as trees are things attached to the earth." **Sub-Collector of Godavari v. Siragam Subbarayudu**, 16 M.L.J. 551.

SUBRAHMANYA AYYAR and MILLER, JJ.

Act IV of 1894 (Dt. Municipalities, Madras).

(1) *Ss. 10, 10 A, 19, 34, 35, 36—Election of Municipal councillor—Right of Government to set aside the election on account of disqualification of the candidate.*

S. 10 A expressly declares that persons, convicted of offences implying a defect of character, are not qualified to be appointed by election or otherwise, and the Government has power to make rules as to how such disqualification should be ascertained and enforced, and to make the validity of an election dependent on the absence of such disqualification. Rules 34, 35 and 36 were therefore duly made, and not *ultra vires*. The general scope of these rules is to provide for questioning the validity of elections, by petitions put in within 15 days of the date of election, and it is only orders by the Collector on such petitions that are made final by rule 36. Rule 34, however, besides providing for election petitions, reserves the right of the Government or the Collector himself to take action on any facts, affecting the validity of an election, which may come to their notice. When the fact of a conviction comes to the notice of the Governor-in-Council, these words authorise him to take action by stating that, in his opinion, the conviction implies a disqualifying defect of character, and ordering a new election accordingly; and he is not restricted to proceeding by enquiry under rule 35.

It may be that the Governor-in-Council might have, by notification "removed" the

Art IV of 1834 (Dt. Municipalities, Madras).
—(Concluded).

nominee, on the ground that he was not qualified for election, but it would not follow from that that he is unable to take power by rule to invalidate the nominee's election on the same ground, without a notification.

But rules 95 and 96 do not warrant the validity of an election being questioned on the ground that the nominee was likely to bring the municipal administration into contempt, without such inquiry as is there provided for, and a disqualification pronounced without such inquiry cannot be supported. **The Secretary of State for India in Council v. P. R. Venkatesalu Naidu**, 1 M.L.T. 435.

MILLER and WALLIS, JJ.

Civ. Pro. Code (Act XIV of 1882).

- (1) *S. 244 (c)*—Application of, where objection is raised to the decree itself and not to its execution &c.—Objection by party defendant to sale of mortgaged property ordered to be sold by decree.

Where, on an application to make a mortgage decree absolute and for an order for the sale of the property, a party defendant seeks to stop the sale, contending that the decree passed against him is not binding on the property, on the ground that, since the decree, he has been adopted into the family of another person to whom the property belongs, the objection is an objection to the decree itself, and not to the execution, discharge or satisfaction of the decree, and therefore, *S. 244 (c)* does not apply to the case. **Kumaratta Servalgaram alias Chinnasami v. P.L.S.A.R. Sabapathy Chettiar**, 16 M.L.J. 545.

BODDAM & WALLIS, JJ.

References.—10 A. 480, 21 A. 277, 25 C. 133 32 C. 265, F. 7 M. 255, D.

- (2) *Ss. 101, 157, 588, 591*—Setting aside ex parte order—Right of appeal as to the terms under which it is so set aside.

A Court which, after recording certain statements, decided that sufficient cause for the defendant's non-appearance had not been shown, but, nevertheless, set aside the *ex parte* order, strictly speaking, exceeds its jurisdiction. Reading together *Ss. 101 & 157*, it could only have rejected the application to set aside the order and proceeded to record its judgment. An appellate Court cannot, on appeal from the

Civ. Pro. Code (Act XIV of 1882).—(Concluded).

decree passed in such a case, interfere with the terms imposed upon the defendant when setting aside the *ex parte* order. *S. 588* gives him no right of appeal as to the terms on which he should be put, nor can it be said that the term imposed "affected the decision of the case" within the meaning of *S. 591*. The words "affecting the decision of the case" in *S. 591* mean "affecting the decision of the case with reference to the merits of it." (a) **Mohomad Akbar Khan v. R.B. Kasturchand Daga**, 2 N.L.R. 179.

DRAKE-BROCKMAN, J.C.

References.—23 C. 738 (F.B.), 20 B. 380, 16 C. 426, *It* (a) 22 C. 981, 24 A. 464, 25 A. 280, R.

- (3) *S. 372*—Appeal against order allowing objections under—Mortgage suit whether pending until conditional decree is made absolute.

No appeal lies against an order allowing objections under *S. 372*. A mortgage suit is pending within the meaning of *S. 372*, until the conditional decree is made absolute (a). **Fana v. Tetka**, 2 N.L.R. 178.

JEMAY, J.C.

References.—(a) 9 C.W.N. 171, 23 A. 331, R.

- (4) *S. 574*—Revision—Civil cases—Judgment of appellate Court not complying with the requirements of law.

Where the judgment of the lower appellate Court did not state what the points in dispute were, or what was the decision on those points, the Chief Court on revision set aside the decree, in the case and remanded the appeal for retrial. **Mirbaz v. Makhana**, 153 P.L.R. 1906.

ROBERTSON, J.

Construction (of words).

"Meddatu Krayam"—See TRANSFER OF PROPERTY Act, No. 38-a, 29 M. 531, IN THE BODY OF THE BOOK.

Court Fees Act (VII of 1870).

- (1) *S. 11*—Direction in decree to pay extra Court fee—Execution of decree.

A direction to pay extra Court fee, set forth in the concluding part of a decree, does not form any part of the decree, and no amendment of the decree is necessary to enable the Court to extend the time for payment of the extra fee. The first part of *S. 11*, and not the latter part, applies to the case, and the intention of the first part is, not that a time should

Court Fees Act (VII of 1870).—(Concluded).

be fixed for the payment of the extra Court fee, but the execution should be stayed, until the extra fee payable is paid. The concluding part of the decree is a mere surplusage and does not make execution of the decree conditional upon the payment of the extra fee within the time named by it. **Perianan Chetty v. Nagappa Mudaliar**, 16 M.L.J. 543.

BODDAM and WALLIS, JJ.

Decree.

- (1) *Execution of decree—Interpretation of decree with reference to judgment—Duty of execution Court—Court not competent to refer to compromise and deed on which suit is based—Amendment of decree.*

It is only in the case of some ambiguity on the face of a decree, that the judgment may be looked at by the execution Court, for the correct interpretation of the decree. If it does not agree with the judgment, it can be amended under S. 206 of the Civ. Pro. Code, and it is open to the decree-holder at any time to apply for such amendment.

The execution Court is not competent to refer to the terms of a compromise arrived at in a suit on a mortgage, or of the mortgage-deed, to interpret the decree passed in the suit. **Gurmukh Singh v. Sohan Lal**, 167 P.L.R. 1906.

CHITTY, J.

Execution of decree.

Direction in decree to pay extra Court fee. Effect of, on—See COURT FEES ACT (VII OF 1870), No. 1, 16 M.L.J. 543, IN THE SUPPLEMENT.

Guardian and Minor.

- (1) *Joint Hindu family—Guardian of minor member's property cannot be appointed by Court.*

A Court is not competent to appoint a guardian of a minor member's share in the property of a joint Hindu family.

The minor's remedy is by partition, and after partition, a guardian can be appointed. **Murli Dhar v. Hari Lal**, 165 P.L.R. 1906.

REID, J.

Reference:—25 A. 407 (416), F.

Limitation Act (XY of 1877).

- 1) *S. 5—Limitation—Appeal filed with delay—Sufficient cause—Guardian and ward—Laches on the part of guardian in filing appeal.*

Limitation Act (XY of 1877).—(Continued).

Before a minor can claim the benefit of S. 5 of the Act, in case of an appeal on his behalf being filed by his guardian, after the expiry of the period of limitation prescribed for the appeal, it must be shown that the guardian had sufficient cause for not filing the appeal within limitation. **Prabh Dial v. Mussammat Ishar Devi**, 164 P.L.R. 1906.

REID, J.

Reference:—20 B. 104, R.

- (2) *S. 19—Limitation—Suit for recovery of debt—Sale in consideration of debt—Claim on sale agreement falling through—Interest—Acknowledgment—Procedure when suit liable to be dismissed on a preliminary issue against some of the defendants.*

The defendants owed money to the plaintiffs. In lieu of the money due and a further advance, the defendants agreed to sell their property to the plaintiffs. The plaintiffs not consenting to a particular condition, which, they stated, had not been agreed upon to be entered in the sale-deed, the matter fell through, and the plaintiffs sued for their money with the interest originally fixed. The suit was dismissed, on the ground that the claim as to debt was barred by limitation being more than three years old, and the claim as to the amount advanced for sale was not maintainable, since the plaintiffs had failed to accept the conveyance.

Held that the claim was not barred by limitation, for when it was agreed that the defendants should sell their property to plaintiffs, in lieu of the debt and a further advance, the plaintiffs were not entitled to demand payment of the debt.

- (2) That, as it appeared from evidence that the sale-agreement fell through owing to defendant's default, the plaintiffs were entitled to a refund of the amount advanced by them.

The Chief Court allowed interest at 6 per cent., per annum from the date on which the sale agreement fell through. Acknowledgment, to be sufficient within the meaning of S. 19 of the Act, means acknowledgment of present liability and must expressly and specifically import a liability to pay.

When a claim made against several defendants can be at once dismissed as against one or more of them, on a particular finding, the

DIGEST OF CASES.

Limitation Act. XV of 1877—(Continued).

Court should record the finding, but delay passing the order of dismissal, until the suit is wholly adjudicated upon. **Harl Charan v. C. Brook**, 155 P.L.R. 1906. •

JOHNSTONE and LAL CHAND, JJ.

(3) *Arts. 142, 144, Sch. II—Alluvion and diluvion—Adverse possession—Absentees—Possession of submerged land.*

The plaintiffs were proprietors in possession of the land in suit at the Regular Settlement of 1856, and their names appeared in Revenue Records, till a short time previous to the filing

Limitation Act. XV of 1877—(Concluded).

of the suit against the defendants for recovery of the land. The defendants pleaded adverse possession and abandonment. The *wajib-ul-ads* of 1880 allowed owners to resume land, which re-appeared from the river bed. •

Within 12 years of the suit, the land was under water, and the defendants had not shown that they were in adverse possession of the land prior to its submergence. •

Held, that the claim was valid, and the plea had no force. **Amir Muhammad Shah v. Sultan Khan**, 158 P.L.R. 1906.

JOHNSTONE & HURRY, JJ.

APPENDIX TO THE CURRENT INDEX

SECTION II—CIVIL—1906.

Act XV of 1856 (Hindu Widow's Remarriage).

Right of remarried widow to succeed to her son by first husband—A comment on 28 M. 425—(16 M.L.J. 56).

Act XXVI of 1881 (Negotiable Instruments).

Assignment of pro-note, validity of—Assignment back to assignor—Re-endorsement, necessity for—A comment on 15 M.L.J. 314—28 M. 544—(3 A.L.J. 12).

Act XIII of 1885 (Fatal Accidents).

Suit for compensation under the Act, by whom, should be instituted—"Representative" meaning of the term—A comment on 28 M. 479—(3 A.L.J. 12).

Act I of 1886 (Abkari).

S. 28, effect of sale for arrears under the section on prior encumbrance by defaulter—A comment on 28 M. 420—(16 M.L.J. 55).

Act VII of 1889 (Succession Certificate).

S. 4—Decree for enforcement of mortgagee's rights against mortgaged property, whether a decree for a 'debt' within the meaning of—A comment on 29 M. 77—(16 M.L.J. 166).

Act I of 1894 (Land Acquisition).

S. 23—Acquisition of land with buildings thereon—Principles for fixing amount of compensation—29 B. 514—See 10 C.W.N. LXXI.

Act of State.

What is an—An article by Mr. H.S. Gour, M.A., LL.D., Barrister-at-Law—8 Bôm. L.R. 66 to 76; 97 to 110.

Adoption.

Limitation in questions of adoption—A comment on 16 M.L.J. 440 (P.C.) 16 M.L.J. (Parts IX & X) p. 375, & 11 C.W.N. XLV.

Alienation.

The law of—of property in British India, third parties' consent in—An article by Mr. S. Varadachariar, B.A., B.L.—16 M.L.J. 83 to 96; 189 to 198; 243 to 252.

Ancient lights.

Law as to,—A comment on *Kine v. Jolly*, decided by H.L. (cf. 29 B. 157) 1 M.L.T. 256.

Appeal.

—under the Letters Patent, S. 10, does not lie from order of single Judge acting under S. 622, Civ. Pro. Code—A comment on 28 A. 133—10 C.W.N. CCXLI.

————(Second appeal).

Whether a question as to the *existence* of a custom might be gone into in—A comment on 29 M. 24—(16 M.L.J. 259).

————(to Privy Council).

High Courts to state grounds for refusing leave to—A Comment on 29 M. 194. 16 M.L.J. 331.

Arbitration.

Finality of arbitration—Awards—An article—10 C.W.N. CLVIII to CLIX.

Value of the entire matter submitted to—determines the jurisdiction of Court to file the award in—A comment on 29 M. 44—(16 M.L.J. 154).

See Civ. Pro. Code.—16 M.L.J. 502.

Award.

Setting aside an — An article by Mr. Durga Charan Banerjee—3 A.L.J. 97 to 106.

Finality of the—and of the decree passed upon the—An article by Mr. Durga Charan Banerjee—3 A.L.J. 131 to 134; 179 to 186; 197 to 207; 299 to 331.

Appeal against orders *re*: the filing of—A comment on 29 M. 303, 28 A. 21, 16, M.L.J. 401 & 500.

Bankruptcy.

What amount to notice of suspension of payment in, 1 M.L.T. 255.

Bengal.

The legality of the—partition proclamation—An article—1 M.L.T. 17 and 18.

Bengal Tenancy Act.

Observations on the bill to amend the, 11 C.W.N.V. XIV, XXI, XXIX, XXXVIII.

Boycott.

Law as to, 1 M.L.T. 199.

Cause of action.

—existing independently of a pro-note, maintainability of suit on—A comment on 15 M.L. 484—(8 A.L.J. 56).

Civil Court's Act (XII of 1877).

S. 17—Transfer of area from jurisdiction of one Court to another, latter Court has jurisdiction subsequent to transfer—A comment on 28 A. 93—10 C.W.N. CCXL.

Civil Procedure Code.

Ss. 2, 520 to 526—Appeal against orders *re* the filing of awards—A comment on 29 M. 303, 28 A. 21—16 M.L.J. 401, 500.

S. 11—Suit for location of certain idols in a temple whether suit of a Civil nature—A comment on 2 C.L.J. 590—(8 A.L.J. 13).

Ss. 13 and 48—Prior suit to redeem Kanom as such no bar to subsequent suit based on the Kanom and title—A comment on 28 M. 406—(16 M.L.J. 9).

S. 37, the words 'not resident' in, cover a principal not present within jurisdiction of Court where agent has acted for him—A comment on 28 A. 135—10 C.W.N. CCL XXVI.

Civil Procedure Code.—(Concluded).

- S. 43, not applicable so as to bar suit for redemption brought on the dismissal of a prior suit to redeem same properties but based on a different mortgage—A comment on 29 M. 153—(16 M.L.J. 267).
- S. 44 (Rule b)—Misjoinder of causes of action—Comment on 8 Bom. L.R. 734—(3 A.L.J. 290.)
- S. 244, construction of—whether person attaching a decree “represents” the decree-holder—A comment on 29 M. 318—(16 M.L.J. 436).
- Ss. 244, 318—Application of, where decree-holder applies for delivery after purchasing judgment-debtor's share in joint family property—A comment on 23 M. 234—(16 M.L.J. 398).
- S. 283, the special right of suit conferred by, whether controlled by the proviso to S. 42 of the Specific Relief Act—A comment on 29 M. 151—(16 M.L.J. 264.)
- S. 367, appointment under, of a legal representative for purposes of suit not a final decision as to who is the real legal representative—A comment on 28 A. 109—10 C.W.N. CCXL.
- S. 396, Report of Commissioner appointed under, Court must accept or reject in *toto*—A comment on 28 A. 75—10 C. W. N. CCXL; 16 M. J. 504.
- S. 462—Application of, to the case of a compromise after decree on behalf of a minor—A comment on 29 M. 309—16 M.L.J. 406.
- S. 462—Reference to arbitration where some of the parties are minors—Sanction of Court—A comment on 28 A. 35—16 M.L.J. 502.
- S. 522—See *AWARD, supra*.
- S. 539, not mandatory but permissive and its effect cumulative and not restrictive—A comment on 10 C.W.N. 581—3 A.L.J. 204.
- S. 539, suit under, whether prayers for dispossessing alienees of trust property can be validly made in a—A comment on 28 A. 112—10 C.W.N. CCXL—15 M.L.J. 505.
- S. 531, objection under, whether entertainable as against co-respondents—A comment on 28 A. 95—10 C.W.N. CCXL; 16 M.L.J. 505.
- Ss. 562, 583 (28)—Order of remand, appeal under S. 588, Civ. Pro. Code, from an—Competency of appellant to question, in the appeal, the correctness of the decision on the preliminary point—A comment on 28 M. 444—(16 M.L.J. 60).
- S. 564—Illegal order of remand by appellate Court, how far consent of parties can validate an—A comment on 28 M. 437—(16 M.L.J. 59).
- S. 584 (a)—Competency of High Court in second appeal to go behind the finding of Lower Court as to the existence of a custom—A comment on 16 M.L.J. 8—(3 A.L.J. 89).
- Ss. 586 and 647, order in execution of decree in a suit of small cause nature, whether second appeal lies against—A comment on 30 B. 113—10 C.W.N. CCXXII.

Codification.

- of law with special reference to possibility of codifying Punjab Customary Law—An article—P.L. (1906), 1 to 4, 9 to 13 and 17 to 23.

Construction (of Will.)

Devise of life interest to sons of testator and of residue in favor of the male issue of the sons' such issue failing, in favor of female issue and that again failing in favour of the grand-daughters by his daughter—Legality and effect of the devise—A comment on 28 M. 386—(16 M.L.J. 7).

Devise over “from son to grandson” and “my own grand sons being sons' sons,” meaning of—Adopted son of a son of the testator adopted after testator's death whether a grandson—A comment on 28 M. 363—(16 M.L.J. 12).

Use of the word ‘absolutely.’ Limitation of the rule that in case of repugnancy the first in a—dead and the last in a will shall prevail—A comment on 29 B. 375—7 Bom. L.R. 236—10 C.W.N. ii.

Contract.

The rights of third persons injured by the negligent performance of a contract—An article on—by Mr. Richard Robson—8 Bom. L.R. 190 to 193.

Contract Act (IX of 1872).

S. 30—Wagering contracts, duty of Courts to look to the common intention of both parties in—A comment on 30 B. 88—10 C.W.N. CCXVI.

S. 45—See JOINT PROMISEES—16 M.L.J. 400.

S. 50—See SPECIFIC RELIEF—1 M.L.T. 297.

S. 60—"Interested in payment"—First mortgagee paying Government revenue pending appeal against decree for redemption obtained against him by subsequent usufructuary mortgage—A comment on 3 A.L.J. R. 605—3 A.L.J. 291.

Contracts.

—made through the post—An article by Mr. Richard Robson—8 Bom. L.R. 185 to 189
—Impossibility of performance of—An article—3 C.L.J. 39n to 24n.

Co-owners.

Exclusive dealing by one of several—of property in joint possession, whether injunction could be issued restraining—A comment on 28 A. 161—10 C.W.N. CCLXXVII.

Covenants.

—in restraint of trade—An article by Mr. Earnest J. Blake, Solicitor—8 Bom. L.R. 76 to 78.

Damages for mental suffering.

—caused by delay in telegraphic messages. Recovery of,—7 P.L.R. 67.

Debtor property.

Liability of, for mesne profits due on trespasses by a shebait—An article—10 C.W.N. CCLXXI to CCLXXIV.

Defamation.

Whether laudatory or commendatory language can be the subject of action for,—a comment on an American case. 1 M.L.T. 197.

Estoppel.

Equitable,—a new phase of—An article—10 C.W.N. XC to XCII.

Under S. 283 of the Civ. Pro. Code—An article by Mr. T. T. Tiruvengkatachari—1 M.L.T. 45 to 52.

Ethics of laws.

A discussion in the Church Congress as to whether a lawyer is justified in knowingly pleading the client's unjust cause. 4 Cr. L.J. 92.

Evidence.

Right of parties to agree that—shall be taken in a particular way—A comment on 30 B. 109—10 C.W.N. CCXVI.

—admissible to prove a mortgage by Mr. J.A. Saldanha, Sub-Judge. A comment on 8 Bom. L.R. 553 & connected case-law. 8 Bom. L.R. 320.

Evidence Act (I of 1872).

S. 92, Courts to be guided by the provisions of, in admitting evidence of intention in respect of written document—A comment on 30 B. 119—10 C.W.N. CCXXIII.

S. 108—Presumption of death—Burden of proof—A comment on 8 Bom. L.R. 226—(3 A.L.J. 121).

Execution of decrees.

—against holders of impartible estates—See under IMPARTIBLE ESTATES, *infra*.

Ex parte decree.

Right of appeal against—A comment on 29 M. 362—16 M.L.J. 544.

Forest Lands.

—in South Canara, presumption of Government ownership of 'Jumri' cultivation, meaning of waste lands, right of state to—A comment on 28 M. 257—(10 C.W.N. XIX).

Fraud.

Whether perjured testimony is such fraud as will entitle a party to set aside a judgment based on such testimony—A comment on 29 M. 179—16 M.L.J. 329.

Fraudulent alienations.

Law as to, 16 M.L.J. Parts IX & X, p. 383.

Gifts.

—or grants to two or more persons—An article—1 M.L.T. 63 to 65.

Guardian-ad-litem.

Appointment of a married woman as a—is a mere irregularity not invalidating the decree—A comment on 16 M.L.J. 14—(3 A.L.J. 90).

Guardian and Ward.

Guardian for property cannot be appointed as for the minor, in a joint Hindu family consisting of a minor and major co-parceners—A comment on 30 B. 152—10 C.W.N. CCXXIII.

Guardian and Wards Act (VIII of 1890).

S. 35—No appeal lies from an order under, refusing assignment of an administration-bond—A comment on 10 C.W.N. CCXXIII.

High Court.

Powers of revision of, not confined to matters with no other remedy open—A comment on 28 A. 72—10 C.W.N. CCXL.

Hindu Law.**1.—(Adoption.)**

Cases on—decided during 1905 and 1906—An Article by T.T.T.—1 M.L.T. 103 to 106.

Position of adopted son with reference to adoptive mother's relations—A comment on 30 C.L.J. 502—3 A.L.J. 232—(3 A.L.J. 235).

Adoption by widow—Suit to set aside adoption by presumptive reversioner—whether binding on all reversioners—A comment on 29 M. 390—3 A.L.J. 358.

• Validity of a second adoption by a widow who comes into possession of the estate upon the death of the widow of first adopted son—A comment on 11 C.W.N. 12—(11 C.W.N. ii).

2.—(Alienation).

Sale or mortgage of joint family property by father, necessity of antecedent debt to justify—A comment on 16 M.L.J. 69—(3 A.L.J. 170).

3.—(of Debts).

—An article—1 M.L.T. 145 to 148.

• Impassible zamindari—debts of last holder—whether zamindari is assets in the hands of successor. A comment on 16 M.L.J. 351—3 A.L.J. 818.

Father's debts—Son's pious duty to pay—Burden of proof of immorality—Limitation Act, Art. 120. A comment on 28 A. 508—3 A.L.J.R. 274—3 A.L.J. 322.

Son's liability for father's debts—antecedent debts—A comment on 29 M. 200—16 M.L.J. 382.

4.—(Inheritance).

The Hindu step-mother and the Madras Law—An article by Mr. P. Ananda Charlu—1 M.L.T. 5 to 10.

Prostitute's estate—Letters of administration, application for, by natural heir—A comment on 10 C.W.N. 1085—3 A.L.J. 290.

Hindu Law.—(Concluded).**5.—(Joint Family).**

Two dancing girls who were sisters held to be members of a joint family and one of them being the elder held to be the Manager thereof—A comment on 28 M. 413 (16 M.L.J. 10).

Purchaser in execution of mortgage-decree against father, whether sons not parties to the decree can sue the purchaser to redeem their shares—A comment on 23 A. 192—13 C. W.N. CCLXXVII.

Gift to two undivided brothers, nature of,—A comment on 28 A. 38—16 M.L.J. 502.

6.—(Marriage),

—and sonship—An article—1 M.L.T. 122 to 125.

7.—(Partition).

Right of purchaser of portion of joint family property to sue for partial partition in respect of the portion purchased by him.—A comment on 28 A. 39—16 M.L.J. 503.

8.—(Stridhanam).

Daughter, absolute estate of—*Saudaiyika*, power of disposition of—A comment on 7 Bom. L.R. 936—(3 A.L.J. 13).

To the *Pitridatta Ayantu ka Stridhana* property of a woman her mother is entitled to succeed in preference to husband—A comment on 10 C.W.N. 510—(3 A.L.J. 136).

Succession to *stridhanam* of a childless Hindu widow—A comment on 29 M. 358—16 M.L.J. 544.

9.—(Succession).

Stridhan left by a widow, priority between co-widow and the grand children of the brother of the co-widow's father-in-law in succeeding to—A comment on 8 Bom. L.R. 12—(3 A. L. J. 57).

An article on,—1 M.L.T. 186.

Introduction of female heirs in the line of succession—A comment on 28 A. 187—16 M.L.J. 507.

10.—(Wills).

Principles governing the validity of directions for accumulation given by a Hindu testator.

A comment on 11 C.W.N. 70—(11 C.W.N. XIII.)

Testamentary powers of widow over property inherited from her husband—1 M.L.T. 275.

11.—(General).

Interpretation of Negative Precepts in, an article on the, by Dr. Priya Nath Sen—4 C.L.J. 21n to 24n; 27n to 32n; 35n; 63n; 75n.

Illegal contract.

Recovery against fraudulent defendant in suit between parties to, 1 M.L.T. 288.

Immovable Property.

Standing timber is—An article by Mr. Haribans Sahai—3 A.L.J. 147 to 150; 213 to 217.

Impartible estates.

Execution of decrees against holders of—An article—16 M.L.J. 1 to 7.

Injunction.

Questions that a Court should consider before granting a temporary injunction—10 C.W.N. 179—(1 M.L.T. 9).

Insolvency Law.

—in India and England—An article. 1 M.L.T. 211, 16 M.L.J., 485.

Some topics of, in its international aspect—An article. 16 M.L.J. 527.

Remarks on the Provincial Insolvency Bill, No. 5 of 1906, by Mr. C. M. Gandhi, High Court Vakil. 8 Bom. L.R. 337.

Interest.

The law of—An article by Mr. Kailashad Bhicaji Dastu, B. A., LL.B., Bar.-at-Law—8 Bom. L.R. 77 to 90; 111 to 123, 280 to 286.

Joint promisees.

Suit by one of several—Parties to suit—A comment on 29 M. 302—16 M.L.J. 400.

Judge-made law.

Legitimate functions of,—An article by the Hon. Hanni Taylor of Washington, D.C. 4.Cr. L.J. Nos. 7 & 8, p. 81.

Jurisdiction.

Conflict of—between Civil and Revenue Courts—An article by Mr. Abdul Karim Khan—3 A. L.J. 249 to 257; 269.

Landlord.

Difficulty of a co-sharer—to recover rent from a raiyat—An article—10 C.W.N. LXXXI.

Landlord and Tenant.

Crown land—Interests unknown to the law—Improvements—Equitable rights of tenants—The crown is within the range of the equity—A comment on 29 B. 580—(3 A.L.J. 10.)

Law.

The relation of public opinion to—, an address by Isaac N. Philips, Esq. (Chicago Legal News)—3 Cr. L.J. 44 to 47; 49 to 58.

Law reporting.

Non-official, in India—A plea for its existence—7 P.L.R. 73: 1 M.L.T. 183.

Lease.

Assignment of, mortgage of lessee's interest—Liability of the mortgagee for the rent to the lessor—A comment on 29 B. 391—7 Bom. L. R. 313—10 C.W.N. ii.

Legislation.

The review of—in British India 1903—An article by Sir Courtenay Ilbert, K.C.S.I.—1 M.L.T. 18 to 23.

The review of—in British India 1904—An article by Sir Courtenay Ilbert, K.C.S.I.—1 M.L.T. 167 to 174.

Indian—for 1903-1904, an article—16 M.L.J. 37 to 54.

Limitation Act.

S. 19—Acknowledgment under, must be made and addressed to the person relying on it—A comment on 10 C.W.N. 551—(3 A.L.J. 171).

Art. 35, applicability of, to suits between Hindus for restitution of conjugal rights—Commencement of time—A comment on 28 M. 436—(16 M.L.J. 57).

Arts. 44, 144—Sale deed by plaintiff's guardian—Suit for cancellation of the deed and for possession on the ground of fraud and misrepresentation—A comment on 28 M. 423—(16 M.L.J. 11).

Art. 91 has no application to suit by reversioner to recover property sold by deceased widow—A comment on 33 C. 527—(16 M.L.J. 201.)

Arts. 111, 132—Application of, to suit for recovery of unpaid purchase money—Distinction between lien and charge—A comment on 29 M. 305 & 31 C. 57 (P.C.)—16 M.L.J. 403.

Art. 142—Ouster of trespasser without recourse to law—Decree obtained by trespasser under S. 9, Specific Relief Act—Suit for title—Starting point of limitation—A comment on 10 C.W.N. 1081, 3 A.L.J. 289.

Art. 179, clause 5, an article on by V.N.P.—8 Bom. L.R. 162 to 171.

Lis Pendens.

Its applicability to Court sales—Review of the case law. 8 Bom. L.R. 288

Legal Inspection.

Non-service of notice to parties on, effect of—A comment on 88 C. 133—(16 M.L.J. 199).

Madras Estates Land Bill.

Comments on, 16 M.L.J. p. 301.

Mahomedan Law.

A sketch of the principles of and of the growth of Mahomedan Jurisprudence—Articles by Mr. Abdur Rahim—3 C.L.J. 11n to 18n; 19n to 23n; 27n to 31n; 47n to 50n; 55n to 58n; 67n to 70n; 85n to 88n; 97n to 102n and 107n to 111n.

1.—(Divorce).

Talak-i-bain by one pronouncement in the absence of wife—Communication of divorce—Muzulmaut—Death of the husband before expiration of period of iddat—A comment on 8 Bom. L.R. 85—(3 A. L. J. 57).

2.—(Family arrangements).

Validity of transactions in the nature of—A comment on 8 Bom. L.R. 252—(3 A.L.J. 122). Agreement not to partition family property, whether could bind descendants—A comment on 28 A. 185—10 C.W.N. CCLXXVII.

3.—(Gift).

Donor not bound to physically vacate the gifted property in favour of donee—A comment on 28 A. 147—10 U.W.N. CCLXXVI.

4.—(Inheritance).

Exclusion of *ghairkuf* wife—entry in *Waji-bul-arz*.—A comment on 28 A. 173—3 A.L.J. 358.

5.—(Restoration of conjugal rights.)

—non-payment of dower after consummation of marriage no defence to a suit for—A comment on 80 B. 122—10 C.W.N. CCXXIII.

6.—(Wakf).

Settlement in favour of the *waqif's* family, validity of—A comment on 8 Bom. L. R. 245—(3 A.L.J. 122).

Intention of the *waqif* to be discovered from the document—Evidence of subsequent treatment of *waqif* property, if material—A comment on 10 C.W.N. 449—(3 A.L.J. 135).

Maintenance.

—grants, *prima facie* reasonable on death of grantee—Alienability of, depends on intention of parties—A comment on 3 C.L.J. 521—(3 A.L.J. 236).

Marriage.

“Mixed” marriages—An article by Mr. H. Cohen, Bar-at-law, 8 Bom. L.R. 281.

Marshalling and contribution.

A Comment on 29 M.217.—16 M.L.J. 396.

Maxim.

The, delegatus non potest delegare, an exception to—An article by Mr. Richard Robson—Bom. L.R. 185 to 189.

Mistake of Law.

Whether a Court of Equity will in any circumstance relieve against a—in a contract—A comment on 27 A. 678—(10 C.W.N. CXXXVIII).

APPENDIX.

Mortgage (General).

One executant of deed claiming to be jointly found to be joint-mortgagor—Plaintiff claiming too much—A comment on 28 A. 482—3 A.L.J. 321.

Whether a sale followed by an agreement to recover amounts to a—A Comment on 29 M. 307—16 M.L.J. 405.

Mortgage (by Receiver).

Power of Courts—Practice in mofussil—A Comment on. 11 C. W. N. 1,—11 C. W. N. ii.

Mortgage (Redemption).

Redemption by subsequent mortgagee—Right of purchaser under first mortgage—Amount to be paid by puisne mortgagee—A comment on 10 C. W. N. 392—3 A. L. J. 209.

Suit for redemption—Payment of mortgage money by the mortgagor into Government treasury at the time of the Mutiny of 1857—Government's refusal to recognise the payment—Rights of parties—A comment on 28 A. 1 (P. C.)—16 M. L. J. 499.

Mortgage (Sale).

1. al covenant in usufructuary mortgage, when confers a right of sale—A comment on 28 A. 157—10 C. W. N. CCLXXVI.

First and third mortgages to same person—Surplus proceeds of sale under first mortgage, withdrawal of, in satisfaction of third mortgage—Suit by second mortgagee to enforce his lien, limitation for—A comment on 33 C. 92—(16 M.L.J. 198).

Holder of two mortgages on same property, whether can maintain suit on subsequent mortgage for sale subject to prior mortgage—A comment on 30 B. 156—10 C.W.N. CCXXIII.

Name.

When can a man not use his own name. M.L.T. 198.

Noise.

—not necessarily non-actionable because of being an incident of a legitimate trade—A comment on 8 Bom. L.R. 89—(3 A.L.J. 88.)

Notice.

—to quit by a joint-tenant or tenant in common, effect of, in the English law and in the Indian law—A comment on 29 M. 29—(16 M.L.J. 152).

Offer by post.

Acceptance of an—An article by Mr. Priyanath Sen—3 C.L.J. in to 10n.

Order absolute.

—for sale, effect of an—An article by Mr. H. S. Gour—3 A.L.J. 83 to 86.

Oudh Rent Act (XVII of 1876).

Ss. 52 to 55—Remarks on the resumption law laid down in, by Mr. A. Behari Lal, 3 A.L.J. 285.

Partition decree.

Liability of, to stamp duty—An article, 8 Bom. L. R. 300.

Partnership.

The Indian Law of—An article by Mr. Surendra Nath Roy, B.L.—8 Bom. L.R. 193 to 205; 304; 353.

Partnerships.

Registration of, necessity for, 1 M.L.T. 182.

Penalty.

—or liquidated damages—An article—10 C.W.N. CLXXXIX to CXCI.

Pre-emption.

Right of—Refusal of a co-sharer to purchase—Definite agreement with stranger to be communicated to pre-emptor—A comment on 27 A. 670—10 C.W.N. CXXXV, VI.

Preferential right to, of owner of dominant tenement, to a mere neighbour—A comment on 28 A. 127—10 C.W.N. CCXLJ.

Privileged communications.

Law of, as relating to doctor and patient—Article by Mr. F. Beecher, 4 Cr. L.J., 118.

Probate and Administration Act (V of 1889).

Demonstrative legacies, to be deemed as carrying interest—A comment on 29 M. 155—(16 M. L.J. 69).

Registration Act.

Validity of splitting up a transaction to avoid registration—A comment on 3 A.L.J.R. 661,—8 A.L.J. 291.

S. 17—A compromise decree transferring lands other than those in suit, whether compulsorily registrable—A comment on 29 A. 78—10 C.W.N. CCXL.

Release.

—of mortgaged property in favour of an assignee of a portion of it, necessity of registration—A comment on 10 C.W.N. 551—(3 A.L.J. 171).

Religious endowments.

Right of trustee to create a perpetual tenure—Suit for ejectment—A comment on 28 M. 391—(16 M.L.J. 8).

Review of Indian decisions & P.C. decisions in 1905-1906—1 M.L.T. 217.

Rent Recovery Act (VIII of 1833, Madras).

Collector's sanction for enhancement of rent not a judicial proceeding and may be general—A comment on 28 M. 427—(16 M.L.J. 57).

Power-of-attorney, grant of, to exercise rights of shrotriendmar—Power irrevocable—A comment on 28 M. 301—(10 C.W.N. XIX).

Res judicata.

An article by Mr. Janardan Damodar Dikshit—3 Bom. L.R. 140 to 162 ; 236 to 244 ; 257.

Civ. Pro. Code, S. 13, Explanation V—"Right to relief claimed in common"—Right to relief claimed in previous suit essential to bar a claim as *res judicata*—A comment on 28 M. 457—(3 A.L.J. 11).

Suit dismissed in defendant's absence on failure of plaintiff to adduce any evidence—Fresh suit, if barred by S. 13, Civ. Pro. Code—A comment on 10 C.W.N. 40—(3 A.L.J. 9).

Competency of former Court to decide subsequent suit, both as regards pecuniary limit and subject-matter, essential—A comment on 29 M. 65—(16 M.L.J. 154).

Whether decision in a prior suit of a small cause nature but tried as original suit operates as—in respect of subsequent suit involving same issues—A comment on 16 M.L.J. 41—A.L.J. 169).

Joint trial—Matter directly and substantially in issue—Suits disposed of by one judgment—A comment on 33 C. 1101—3 A.L.J. 359.

—in execution-proceedings—an article by Mr. R. Srinivasa Aiyangar, Pleader, 3A.L.J. 309.

Decision in suit against which no second appeal is allowed, no bar to suit which is open to second appeal.—A comment on 29 M. 195—16 M.L.J. 331.

Cross suits between same parties in respect of the same matter—one judgment, but 2 decrees—Appeal against one decree—A comment on 29 M. 333—16 M.L.J. 543.

Restitution of conjugal rights.

Suit for,—Money value for purposes of jurisdiction—Jurisdiction of Munsif to try the suit—A comment on 28 A. 545—3 A.L.J. R. 266—3 A.L.J. 323.

Revenue-Recovery Act (Madras).

Levy of penal assessment for encroachment on *poramboke* land, legality of—A comment on 28 M. 312—(10 C.W.N. XIX).

Revenue sale.

Hardships under the law of—An article by Babu Jogendra Nath Mukherji—10 C.W.N. CCLXII to CCLXV.

Right of suit.

—to set aside judgment obtained by fraud on Court by committing deliberate perjury and suppressing evidence—A comment on 16 M.L.J. 59—(3 A.L.J. 170).

Not-off.

The plea of—An article by Mr. Satya Chandra Mukerji—3 A.L.J. 268.

Small Cause Courts Provincial, Act IX of 1887.

S. II, Art. 31—Suit for specific sums of money though profits of different sorts of lands is not excluded by—A comment on 30 B. 147—10 C.W.N. CCXXIII.

Sovereign powers.

—of British Government, exercise of, in Native States through political Agents, diplomatic rather than judicial—Final appeal to Secretary of State and not to the Privy Council—A comment on 33 C. 219—(16 M.L.J. 200).

Specific Relief.

Impossibility as defence to, 1 M.L.T. 297 & 3 A.L.J. 349.

Specific Relief Act.

S. 42, proviso—Validity of declaration that a mortgage is security, not for the entire consideration mentioned in it, but only for a portion—Failure to claim consequential relief—A comment on 29 M. 298—16 M.L.J. 399.

Stamp Act (II of 1899).

S. 2 (15)—Liability of partition decree to stamp duty. 8 Bom. L. R. 300.

Sub-mortgages.

An article by Mr. P. Durasawmi Aiyengar, B.A., B.L., Vakil, Madras High Court—8 Bom. L.R. 41 to 52.

Trade-mark.

—belonging to a firm, partner's right to use of—right of seller of goods (as distinguished from manufacturer) to use only quality-mark—A comment on 30 B. 61—10 C.W.N. CCXVI.

Transfer of Property Act (IV of 1882).

S. 39—Maintenance of Hindu widow whether a charge upon the estate—Transfer with intention to defeat her right. A comment on 10 C.W.N. 1074—3 A.L.J. 288.

S. 52, when a suit becomes 'contentious' within the meaning of—A comment on 28 A. 106—10 C.W.N. CCLXXVIII.

S. 52—whether decree on compromise binds purchaser of property pending suit relating to it. A comment on 16 M.L.J. 372—3 A.L.J. 319.

S. 52—See *IN PENDENS*.

S. 52—See *FRAUDULENT ALIENATIONS*, *supra*.

S. 54 (last clause)—Passing of title to land—Delivery of possession without registered deed—ejectment suit by vendor. A comment on 16 M.L.J. 395—3 A.L.J. 319.

S. 55—Distinction between charge and lien—Limitation for suits for recovery of unpaid purchase money—A comment on 29 M. 305 & 31 C. 57 (P.C.)—16 M.L.J. 403.

Ss. 60, 63—Time limit to mortgagee's exercise of power of deposit in Court—An article. 8 Bom. L.R. 349.

Ss. 67, 92—Right of sale in a usufructuary mortgage with a covenant to pay.—A comment on 28 A. 157—16 M.L.J. 506.

S. 68—Construction—limitation for suits under—A comment on 20 M. 362—16 M.L.J. 544.

Transfer of Property Act (IV of 1882)

S. 85—Mortgagee's right to a suit for foreclosure or sale to or by portion of the mortgaged property and to omit to join as parties persons interested in the portion omitted.—A comment on 28 A. 274—16 M.L.J. 536.

S. 88, decree under judgment-debtor not competent to question, in execution-proceedings.—A comment on 28 A. 33—10 C.W.N. 61, XVII.

S. 89—*Mortgagee's* discharging an anterior encumbrance after Court's rights of order absolute for sale, effect of.—A comment on 29 A. 37—(16 M.L.J. 153).

S. 97—Sale in contravention of S. 99—Confirmed before the passing of Act—Son's right to redeem.—A comment on 29 M. 421—3 A.L.J. 361.

S. 135-b (prior to its amendment by Act II of 1900), exception, whether applicable only to transfers where the debt due to assignee forms the entire consideration.—A comment on 29 M. 153—(16 M.L.J. 267).

Trust Act (II of 1882).

S. 84—"Illegal purpose not carried into execution," meaning of the words—Plaintiff in *'pari delicto'* with defendant not entitled to any relief.—A comment on 15 M.L.J. 478—29 M. 72—3 A.L.J. 57 and 16 M.L.J. 156.

Trusts.

Trust-deed executed by father and son, whether could be regarded as induced by undue influence of father when latter obtains no advantage for himself.—A comment on 29 M. 1—(16 M.L.J. 252):

Will.

Construction of, presumption in favour of testacy.—A comment on 3 C.L.J. 515—(3 A.L.J. 236).

Zemindari

—*dek* cases, an article on—10 A.W.N. CXXXVI.

